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April 22, 1985

ATTORNEY GENERAL OPINION NO. 85- 38

Honorable Edwin H. Bideau III
State Representative
Fifth District
123 W. Main
Chanute, Kansas 66720

Re: Schools; Community Colleges--Organization; Powers and
Finances of Boards of Trustees--Authority of Boards
of Trustees

Synopsis: A board of trustees of a community college lacks
authority to contract to provide instruction out-
side the state of Kansas. Cited herein: K.S.A.
1984 Supp. 71-201, K.S.A. 71-205, 75-3099.

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Dear Representative Bideau:

On behalf of the Board of Trustees of Neosho County Community College, you seek an opinion on whether a board of trustees has the authority under K.S.A. 1984 Supp. 71-201(b) to enter into contracts to provide education or training services outside the state of Kansas. You note that under paragraph (7) of the law, a board of trustees is granted the general power "[t]o enter into contracts." You also note, however, that paragraph (15) of that same law prescribes a specific grant of authority to boards of trustees to enter into contracts with out-of-state institutions or agencies to provide instruction for students of the community

colleges. There is no specific grant of authority for boards of trustees to contract to provide instruction outside the state of Kansas. In light of these facts, you inquire whether contracts for such services are authorized.

The Kansas Supreme Court has stated that community colleges are bodies corporate comparable to other school districts. State ex rel. v. Hayden, 197 Kan. 199, 200 (1966). In NEA-Wichita v. U.S.D. No. 259, 234 Kan. 512 (1983), the court held:

"A school district is an arm of the state existing only as a creature of the legislature to operate as a political subdivision of the state. A school district has only such power and authority as is granted by the legislature and its power to contract, including contracts for employment, is only such as is conferred either expressly or by necessary implication. Gragg v. U.S.D. No. 287, 6 Kan.App.2d 152 Syl. ¶3, 627 P.2d 335 (1981)." Id. at Syl. ¶2.

Also, in State ex rel. v. Rural High School District No. 7, 171 Kan. 437 (1951), the court stated:

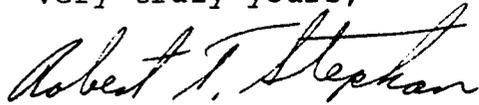
"In this state it has long been the rule that school districts and other subdivisions of the state have only such powers as are conferred upon them by statute, specifically or by clear implication, and that any reasonable doubt as to the existence of such power should be resolved against its existence. (School District v. Robb, 150 Kan. 401, 93 P.2d 905, 124 A.L.R. 879; Township Board of Ash Creek v. Robb, 166 Kan. 138, 199 P.2d 521; Byer v. Rural High School Dist. No. 4, 169 Kan. 351, 219 P.2d 382.)" Id. at 441.

In this case, it is doubtful whether community colleges possess the authority to contract to provide services outside the state of Kansas. The legislature has been very specific in authorizing boards of trustees to enter into contracts concerning the provision of instruction, either by a community college or on its behalf. As you indicate, paragraph (15) of K.S.A. 1984 Supp. 71-201(b) specifically authorizes contracts for instructional services to be provided to students of community colleges. Correspondingly, K.S.A. 71-205 and 75-3099 specifically authorize boards of trustees to contract to provide instruction. However, no authority has been granted to provide instruction outside the state.

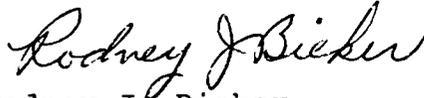
In LeSueur v. LeSueur, 197 Kan. 495 (1966), the court stated the rule that "an affirmative description of powers granted implies a denial of nondescribed powers." Id. at 500. We believe that rule is applicable here. The legislature has been very specific in granting boards of trustees the power to enter into contracts in regard to instruction. It has not, however, authorized boards of trustees to contract to provide educational services outside the state. The affirmative description of powers granted implies a denial of nondescribed powers. If boards are to have this power, an affirmative grant of authority should be prescribed by the legislature.

Based upon the considerations stated herein, it is our opinion that a board of trustees of a community college lacks authority to enter into contracts to provide instruction outside the state of Kansas.

Very truly yours,



ROBERT T. STEPHAN
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RTS:JSS:RJB:jm