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August 5, 1988

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ATTORNEY GENERAL OPINION NO. 88- 108

Melvin F. Corn, Director
Area Vocational-Technical School
2215 N. Kansas
P.O. Box 1599
Liberal, Kansas 67905-1599

Re: Schools -- Miscellaneous Provisions -- Use of
Tobacco Products in Public School Buildings
Prohibited

Schools -- Vocational Education -- General
Provisions -- Definitions

Synopsis: The plain language of L. 1988, ch. 229, § 1, prohibits the use of tobacco products in school buildings used by the board of education of a unified school district. The legislative history implies that this prohibition applies only when the school buildings are used by students in grades K-12. An area vocational school or an area vocational technical school in which students in grades K-12 do not attend is not bound by the prohibition. However, if students in grades K-12 do attend a vocational school governed by a U.S.D. board of education, use of tobacco products in the school building is prohibited. Cited herein: K.S.A. 72-4411; 72-4412; L. 1988, ch. 229, § 1 (to be codified at K.S.A. 72-53,107).

* * *

Dear Mr. Corn:

As Director of the Liberal Area Vocational-Technical School, you have requested our opinion concerning 1988 House Bill 2823, L. 1988, ch. 229, § 1 (to be codified at K.S.A. 72-53,107). The new law prohibits the use of tobacco products in school buildings.

School buildings are defined by the act to mean,

"any enclosed building used for pupil attendance purposes by the board of education of a unified school district. The term school building does not include a building, or part thereof, used for residential purposes or leased from the school district for non-school sponsored activities." L. 1988, ch. 229, § 1(b).

You ask whether this includes "vocational-technical schools whose Board of Control is the same as a Board of Education of a Unified School District."

Area vocational schools (AVS) and area vocational-technical schools (AV-TS) are established and governed by K.S.A. 72-4411 et seq. The governing body of an AVS or AV-TS may be the "board of education of any school district, the board of trustees of any community college, the board of regents of any municipal university, the board of control of any area vocational-technical school, or the state board of regents." K.S.A. 72-4412(a). Because there is a variety of possible governing bodies, it is unclear whether an AVS or AV-TS is a school building within the meaning of L. 1988, ch. 229, § 1(b).

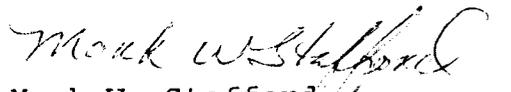
Having found that the statute is ambiguous, we may consider the legislative intent to resolve the questions. Kansas Power & Light Co. v. Kansas Corporation Commission, 237 Kan. 394, Syl. ¶ 2 (1985). Legislative history and the purposes to be accomplished are proper considerations in determining the legislative intent. State v. Freeman, 236 Kan. 274, 288 (1984). The purpose of the act is to address the "hypocrisy of curriculum in schools which teach the detrimental effects of tobacco consumption, then offer a designated smoking area for teachers and on some occasions for students." Minutes, House Committee on Public Health and Welfare, page 1, February 18, 1988. Testimony by a conferee

indicates that the intent was to "prohibit smoking in all K-12 public school buildings." See Minutes, House Committee on Public Health and Welfare, Attachment No. 1, February 18, 1988 (Testimony of Representative Baker, a sponsor of the bill).

In summary, the plain language of the statute indicates that the prohibition applies in school district buildings used for pupil attendance purposes. The history of the statute implies that the prohibition applies only to grades K-12. It is therefore our opinion that an AVS or AV-TS in which secondary students do not attend is not bound by the prohibition against tobacco use. However, an AVS or an AV-TS which is governed by a board of education of a unified school district and which has secondary students in attendance may not allow tobacco use in a school building.

Very truly yours,


ROBERT T. STEPHAN
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