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July 25, 1990

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ATTORNEY GENERAL OPINION NO. 90- 89

David Shriver
Attorney at Law
100 S. Main
P.O. Box 1313
McPherson, Kansas 67460

Re: Schools -- Organization, Powers and Finances of
Boards of Education -- Clerk; Appointment and
Duties; Custody of Records

Laws, Journals and Public Information -- Records
Open to Public -- Definitions; Official Custodian

Synopsis: K.S.A. 72-8202c(b) legislatively designates the
clerk of a school board as the entity responsible
for the maintenance of school board records. Thus,
the clerk of a school board is the official
custodian of school board records. However, K.S.A.
45-217 and 45-220 permit the official custodian to
designate other persons as necessary to carry out
the duties of the custodian under the provisions of
the Kansas open records act. Cited herein: K.S.A.
45-215; 45-217; 45-220; 72-8202; 72-8202b,
72-8202c.

* * *

Dear Mr. Shriver:

As legal counsel for the school board of Canton-Galva U.S.D.
No. 419, you request our opinion as to which official is the
"true" custodian of school board records - the superintendent

or the clerk. You note the language contained in K.S.A. 72-8202c and 45-217(c) and enclose a copy of language proposed by the Kansas Association of School Boards which designates the superintendent as the custodian of school board records. You proffer the position that the superintendent is the true custodian of records and you offer policy arguments for that position. While we do not take issue with the wisdom of these policy statements, our function is to determine what the law states, requires or permits.

K.S.A. 45-215 et seq. establishes the Kansas open records act (KORA) and sets forth the policy and procedures involved in providing the public with access to or copies of public records. K.S.A. 45-217(c) and (d) define and differentiate between "custodian" and "official custodian":

"(c) 'Custodian' means the official custodian or any person designated by the official custodian to carry out the duties of custodian under this act.

"(d) 'Official custodian' means any officer or employee of a public agency who is responsible for the maintenance of public records, regardless of whether such records are in the officer's or employee's actual personal custody and control."

K.S.A. 45-220 allows each public agency to adopt procedures to be followed in requesting access to and obtaining copies of public records. In establishing such procedures, K.S.A. 45-220(e) states:

"(e) Each official custodian of public records shall designate such persons as necessary to carry out the duties of custodian under this act and shall ensure that a custodian is available during regular business hours of the public agency to carry out such duties."

K.S.A. 45-220(f) (2) further provides:

"(f) Each public agency shall provide, upon request of any person, the following information:

. . . .

"(2) The title and address of the official custodian of the agency's records and of any other custodian who is ordinarily available to act on requests made at the location where the information is displayed."

Thus, the KORA clearly contemplates situations wherein the law does not otherwise establish who is the "official custodian" and permits the "official custodian" to designate other persons to carry out the duties of the custodian. The remaining issue therefore becomes whether the law establishes the clerk as the official custodian of school board records.

K.S.A. 72-8202 et seq. set forth the basic laws applicable to local unified school districts and school boards. K.S.A. 72-8202b states that "the board of education of each school district shall appoint a superintendent. . . ." K.S.A. 72-8202b(c) sets forth the basic authority of such superintendents:

"(c) The superintendent of schools shall have charge and control of the public schools of the school district, subject to the orders, rules and regulations of the board of education."

K.S.A. 72-8202c states that "the board of education of each school district shall appoint a clerk . . . the clerk shall not be a member of the board and shall not be the same person as the superintendent of schools or the treasurer." The duties of the clerk are set forth at K.S.A. 72-8202c(b):

"(b) The clerk shall keep an accurate journal of the proceedings of the board of education. The clerk shall have the care and custody of the records, books and documents of the board. The clerk shall prepare and submit to or for the board all reports required of him by the board and by law." (Emphasis added).

K.S.A. 72-8202c(b) makes the clerk responsible for the maintenance of certain public records and, thus, the clerk fits the definition of "official custodian" as set forth at K.S.A. 45-217(d). It is our opinion that K.S.A. 72-8202c(b) legislatively designates the clerk as the official custodian of the records, books and documents of the board. However,

pursuant to K.S.A. 45-217(c) and (d), and 45-220(e) and (f)(2), the clerk may designate the superintendent as the custodian of school board records for the purposes of the Kansas open records act.

Very truly yours,



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