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November 6, 1990

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ATTORNEY GENERAL OPINION NO. 90- 122

Meredith Williams
Legislative Post Auditor
Legislative Division of Post Audit
109 West 9th, Suite 301
Mills Building
Topeka, Kansas 66612-1285

Re: Schools--Educational Excellence Grant
Program--Grants to Eligible School Districts for
Participation in Program; Amount, Limitation,
Proration

Synopsis: The board of education of any school district which submits to the state board of education an application for a grant and a description of an educational system enhancement plan or an at risk student assistance plan or both such plans is eligible for a grant of state moneys under the educational excellence grant program. However, eligibility alone does not guarantee the award of a grant. The application and description of the plan will be reviewed and evaluated by the state board of education, and the amount of grant each school district is determined to be eligible to receive will be subject to the funding priorities established by the state board. If the amount of appropriations for the educational excellence grant program is insufficient to pay in full the amount each school district is determined to be eligible to receive, the state board must prorate the amount appropriated among all school districts which are eligible to receive grants of state moneys under the provisions of the K.S.A. 1989 Supp. 72-9901 et seq., as amended by L. 1990, ch. 259, in

proportion to the amount each school district is determined to be eligible to receive. Cited herein: K.S.A. 1989 Supp. 72-9901, as amended by L. 1990, ch. 259; 72-9902, as amended by L. 1990, ch. 259, § 2; 72-9903, as amended by L. 1990, ch. 259, § 3; 72-9904, as amended by L. 1990, ch. 259, § 4.

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Dear Mr. Williams:

As legislative post auditor, you request our opinion regarding the proper allocation of funds under the educational excellence grant program (program), K.S.A. 1989 Supp. 72-9901 et seq., as amended by L. 1990, ch. 259. Specifically, you ask whether K.S.A. 1989 Supp. 72-9904(c), as amended by L. 1990, ch. 259, § 4, requires funds available under the program to be allocated on a prorated basis to those school districts determined to be eligible to receive grants should it be determined that appropriated funds for the program are insufficient to pay in full the grants to which each school district is entitled.

K.S.A. 1989 Supp. 72-9904(c), as amended, states:

"If the amount of appropriations for the educational excellence grant program is insufficient to pay in full the amount each school district is determined to be eligible to receive for the school year, the state board shall prorate the amount appropriated among all school districts which are eligible to receive grants of state moneys under the provisions of this act in proportion to the amount each school district is determined to be eligible to receive."

The intent of the legislature is clearly expressed within the language of the statute. Where the language of the statute is plain and unambiguous, that language controls. Barber v. Williams, 244 Kan. 318, 324 (1989). Therefore, if the state board establishes the amounts of grants of school districts eligible to receive such grants, and it is determined that funding appropriated for the grant program is insufficient to pay in full all of the grants, the state board

must prorate the appropriations based on the amount of the grants of school districts determined to be eligible to receive such grants.

While this analysis is sufficient to answer the specific issue you present, the analysis will do little to clear an underlying ambiguity raised in your request. From information you have provided, it appears that there is a question regarding whether a school district is guaranteed an award of a grant once the state board of education has approved a school district's plan and application.

Under authority of K.S.A. 1989 Supp. 72-9903, as amended by L. 1990, ch. 259, § 3, the state board of education has established a procedure in determining the amount of grant a school district is eligible to receive. The procedure is outlined in the application packet which must be completed by all school districts seeking grants under the educational excellence grant program. Under the procedure, the applications and plans will be reviewed by a screening committee and evaluated by a selection committee. The selection committee then has the responsibility of making recommendations based upon state board established criteria and funding priorities to the state board regarding the awarding of grants of state moneys.

Confusion appears to occur due to terminology of K.S.A. 1989 Supp. 72-9904, as amended, regarding eligibility of school districts to receive grants. Consideration of the remaining provisions of the act will assist in the proper construction of K.S.A. 1989 Supp. 72-9904, as amended. [In order to ascertain legislative intent, courts are not permitted to consider only an isolated part or parts of an act but are required to consider and construe together all parts thereof in pari materia. Board of Johnson County Commissioners v. Greenshaw, 241 Kan. 119, 128 (1987). The words and phrases of the statute are to be construed according to context and the approved usage of language, and words in common usage are to be given their natural and ordinary meaning. Tobin Construction Co. v. Kemp, 239 Kan. 430, 436 (1986).] K.S.A. 1989 Supp. 72-9902, as amended by L. 1990, ch. 259, § 2, states in part:

"(a) The board of every school district may participate in the educational excellence grant program through development and maintenance of an educational system enhancement plan or an

at risk pupil assistance plan or both such plans, and may apply for a grant of state moneys to supplement amounts expended by the school district for development and maintenance of either such plan or both such plans.

"(b) In order to be eligible for a grant of state moneys provided by this act for the development and maintenance of an educational system enhancement plan, a board shall submit to the state board an application for a grant and a description of the plan. The plan must include an evaluation procedure designed to measure effectiveness of the plan in improving the educational system of the school district. Approval by the state board of the plan and the application is prerequisite to consideration of the plan for the award of a grant." (Emphasis denotes new language.)

Further, K.S.A. 1989 Supp. 72-9904, as amended, states in part:

"(a) In each each year, to the extent that appropriations are available, each school district which is participating in the educational excellence grant program through maintenance of an approved educational system enhancement plan shall be eligible to receive a grant of state moneys. The amount of the grant to a school district shall be determined by the state board in accordance with established funding priorities, but in no event shall the amount of a grant exceed 50% of the amount of the actual expenses incurred by the school district in maintaining its plan."

Construing these statutes together, it is clear that a school district is considered to be eligible to receive a grant of state moneys upon submission of an application and plan. However, a determination of eligibility under K.S.A. 1989 Supp. 72-9902, as amended, entitles the school district only to further consideration of its application and plan for the award of a grant. A determination of eligibility of a school

district does not in and of itself guarantee that a school district will receive such a grant.

Before the amount of a grant a school district is determined to be eligible to receive can be established, the application and plan of the school district must meet the qualifications of K.S.A. 1989 Supp. 72-9902, as amended, and K.S.A. 1989 Supp. 72-9904, as amended. The application and plan must receive the approval of the state board of education. The plan will then be measured by the funding priorities established by the state board pursuant to K.S.A. 1989 Supp. 72-9903, as amended. If the school district is able to show that it can match the amount of the grant through its own available funds, the amount of the grant a school district is determined to be eligible to receive is established. The state board may determine that, based on its funding priorities or the inability of a school district to cover the remaining costs of its plan, a school district should not receive a grant under the educational excellence grant program. Approval by the state board of education of an application and plan guarantees only that the plan will be considered for award of a grant.

Very truly yours,



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Richard D. Smith
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