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April 5, 1991

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ATTORNEY GENERAL OPINION NO. 91- 33

The Honorable Michael R. O'Neal  
State Representative, One Hundred Fourth District  
State Capitol, Room 181-W  
Topeka, Kansas 66612

Re: Schools-Community Colleges--Organization, Powers  
and Finances of Boards of Trustees--Boards of  
Trustees; Powers and Duties; Disposition of  
Property; Lease

Synopsis: The board of trustees of a community college has  
the power pursuant to K.S.A. 1990 Supp.  
71-201(a)(10) to dispose of any property owned by a  
community college. The power to dispose of  
property owned by a community college includes the  
authority to lease that property. Cited herein:  
K.S.A. 1990 Supp. 71-201.

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Dear Representative O'Neal:

As representative for the one hundred fourth district, you  
request our opinion regarding whether the power conferred  
under K.S.A. 1990 Supp. 71-201(a)(10) upon a board of trustees  
of a community college includes the authority to enter into a  
lease of property owned by the community college.

The board of trustees of a community college is to have  
custody of and be responsible for the property of the  
community college and for the management and control of the  
community college. K.S.A. 1990 Supp. 71-201(a). Among the  
powers granted the board of trustees, the board of trustees

has the power "[t]o determine that any property owned by the college is no longer necessary for college purposes and to dispose of the same in such manner and upon such terms and conditions as provided by law." K.S.A. 1990 Supp. 71-201(a)(10). In order to determine whether a board of trustees may enter into a lease of property owned by a community college, it is necessary to determine whether a lease of the property constitutes disposing of the same.

Rules of statutory construction are set forth in State ex rel. Stephan v. Kansas Racing Commission, 246 Kan. 708 (1990):

"The interpretation of a statute is a question of law. The function of the court is to interpret the statute, giving it the effect intended by the legislature. The cardinal rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature govern when the intent can be ascertained from the statute.

"In construing statutes, the legislative intent must be determined from a general consideration of the entire act. If possible, effect must be given to all provisions of the act, and different provisions must be reconciled in a way that makes them consistent, harmonious, and sensible. The language of a statute that is designed to protect the public must be construed in light of the legislative intent and is entitled to a broad interpretation so that its public purpose may be fully carried out. Furthermore, a construction that makes part of the legislative act surplusage should be avoided if reasonably possible.

"In determining legislative intent, we may look at the purpose to be accomplished, the necessity and effect of the statute, and the effect the statute may have under the various construction suggested. A statute should not be given a construction that leads to uncertainty, injustice, or

confusion if possible to construe it otherwise. Words and phrases used in a statute should be construed according to context and the approved usage of the language, which means that words in common use are to be given their natural and ordinary meaning." Id. at 719.  
(Citations omitted).

The power to dispose of property owned by a community college was among those powers conferred upon boards of trustees when the boards were originally established. See L. 1965, ch. 417, § 14. The legislative history of 1965 House Bill No. 893 provides little assistance in determining whether the power to dispose of property owned by a community college includes the authority to lease that property.

The term "dispose of" generally means "[t]o exercise finally, in any manner, one's power of control over; to pass into the control of someone else; to alienate, relinquish, part with or get rid of; to put out of the way; to finish with; to bargain away." Deluxe Black's Law Dictionary 471 (1990). While the term is often used in the restricted sense of "sale" only, the proper definition is largely dependent upon the context in which the term is used. Id.; see also 12A Words and Phrases, "Dispose of" (1954). In determining the actions that a board of trustees may take regarding property owned by a community college, it must be remembered that the board of trustees has the authority to dispose of any property owned by the community college, not just real property, and that the legislature has failed to establish terms and conditions for disposing of such property.

A determination of whether certain actions taken regarding property constitutes disposing of that property has been made by the Supreme Court of Kansas in four cases. Smith v. Becker, 62 Kan. 541 (1901) (statutory requirement that the estate, property, and effects of any person imprisoned under a sentence of life shall be administered and disposed of does not extend to a disposition by devise; possibility of acquittal or pardon of person imprisoned exists); Postlethwaite v. Edson, 102 Kan. 105 (1917) (will provision granting to surviving spouse a life estate with power of disposal, remainder to the children, does not dispose of property occupied as homestead so as to exempt it after death of surviving spouse from debt of decedent; property not occupied as homestead by children); The State v. Gorman, 113 Kan. 740 (1923) (mortgagor who takes mortgaged chattels

out of state with intent to sell the chattels and keep the proceeds commits larceny as removal of chattels from state constitutes disposal of chattels within state); and In re Estate of Taylor, 185 Kan. 523 (1959) (property subject to executory contract is disposed of before all installments are paid despite provisions in agreements for forfeiture for nonpayment or breach; property not part of estate). From these cases, it appears that the court recognizes that property may be considered disposed of despite the fact the arrangement may be temporary.

"When land is leased to a tenant, the law of property regards the lease as equivalent to a sale of the premises for the term. The lessee acquires an estate in the land, and becomes for the time being the owner and occupier, subject to all the responsibilities of one in possession, both to those who enter onto the land and to those outside of its boundaries. . . . [I]n the absence of agreement to the contrary, the lessor surrenders both possession and control of the land to the lessee, retaining only a reversionary interest; and he has no right even to enter without the permission of the lessee." Borders v. Roseberry, 216 Kan. 486, 488 (1975). See also Hermes v. Stackley, 10 Kan.App.2d 342, 347 (1985); 49 Am.Jur.2d Landlord and Tenant, §§ 82, 226 (1970).

The power of the board of trustees to dispose of any property owned by a community college does not obligate the board of trustees to dispose of the property only through a sale. Albeit a temporary arrangement, a lease is one useful means of passing control of property to someone else. The board of trustees of a community college has the authority under K.S.A. 1990 Supp. 71-201(a)(10) to enter into a lease of property owned by the community college.

As noted earlier, the legislature has failed to establish terms and conditions to be followed in disposing of property owned by a community college. Therefore, the trustees must be aware of their obligations under common law. The trustees owe an undivided duty to the public they serve and are not permitted to place themselves in a position that will subject

them to conflicting duties or cause them to act other than for the best interests of the community college. See Anderson v. City of Parsons, 209 Kan. 337, 341 (1972). As public officers, the trustees occupy a fiduciary relationship to the political entity on whose behalf they serve. See 63 Am.Jur.2d Public Officers and Employees § 319 (1984).

Very truly yours,

  
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Richard D. Smith  
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RTS:JLM:RDS:jm