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ATTORNEY GENERAL OPINION NO. 2014- 13

Jeffrey A. Chubb, General Counsel
Independence Community College
204 E. Laurel
P.O. Box 747
Independence, KS 67301-0747

Re: Schools-Community Colleges—Attachment of Territory—Territory Attachment; Elections, When; Limitations and Approvals

Synopsis: An area that is currently included in a community college district may not be removed or transferred from such district. Territory that may be added to a community college district pursuant to K.S.A. 2013 Supp. 71-1201 is territory that is not already included within the territory of another community college district. Cited herein: K.S.A. 71-120; 71-702; 71-1101; 71-1102; 71-1103; K.S.A. 2013 Supp. 71-1201; K.S.A. 71-1301; 72-7101; Kan. Const., Art. 6, § 1.

* * *

Dear Mr. Chubb:

As general counsel for Independence Community College, you request our opinion regarding whether a community college may pursuant to K.S.A. 2013 Supp. 71-1201 annex or add additional territory to its taxing district when such territory is already in the taxing district of another community college and, if so, whether the annexed territory is automatically dropped from the first district or is subsequently included in both districts. In addressing the issues you present, we initially review whether an area that is included in the territory of a community college district may be removed or transferred to the territory of another community college district and then determine whether an area that is included in the territory of a community college district may pursuant to K.S.A. 2013 Supp. 71-1201 be added to the territory of another community college district.

The Kansas Supreme Court "has uniformly held that the power to create municipal or quasipublic corporations is a legislative power and that its exercise is a function of the legislature."[1] "The power to create municipal corporations, including the power to designate their boundaries and to increase or to decrease their corporate limits, is purely legislative-it is not a part of either the executive or judicial branch of government."[2]

"A community college is a statutory creation whose actions are limited by the content of those statutes."[3] Such a subdivision of the state has only such powers as are conferred upon it by statute, specifically or by clear implication, and any reasonable doubt as to the existence of such power should be resolved against its existence.[4]

The taxing district of a community college is referred to in state statute as the "community college district."[5] The procedure for establishing a community college district is set forth in K.S.A. 71-1101 *et seq*. The procedure requires that a community college district be comprised of at least all of the territory of the petitioning school district or all of one county.[6] The statutes also provide for adding territory to a community college district following submission of a petition by the board of education of a unified school district or board of trustees of a community college.[7] Further, "the boards of trustees of any two (2) or more community college districts are hereby authorized to enter into agreements to form one consolidated community college district."[8] A procedure for transferring territory from one unified school district to another is set out in K.S.A. 72-7101 *et seq*. However, a community college is statutorily excepted from utilizing those provisions.[9]

We have been unable to locate any other statutory procedure that expressly addresses removing territory from a community college district or transferring territory from one community college district to another. We likewise do not believe the authority to remove or transfer territory is clearly implied in the statutes that address establishing or consolidating community college districts or adding territory to a community college district. An area that is currently included in a community college district may not be removed or transferred from such district.

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[1] *State ex rel. Jordan v. City of Overland Park*, 215 Kan. 700, 706 (1974).
[2] *State ex rel. Tomasic v. Unified Government of Wyandotte County/Kansas City, Kansas*, 264 Kan. 293, 301 (1998), quoting *Taylor v. City of Augusta*, 120 Kan. 42, 50 (1926).
[3] Attorney General Opinion No. 2011-004.
[4] *Hobart v. Bd. of Education of U.S.D. No. 309*, 230 Kan. 375, 383 (1981), quoting *State ex rel. v. Rural High School Dist. No. 7*, 171 Kan. 437, Syl. ¶ 1 (1951).
[5] K.S.A. 71-701(e).
[6] K.S.A. 71-1102(a).
[7] K.S.A. 71-1201.
[8] K.S.A. 71-1301.
[9] *See* K.S.A. 72-7101(a) ("'District' means any school district except a community junior college").

We then determine whether an area that is included in one community college district may be added to the territory of another community college district, thereby placing the area in two districts.

K.S.A. 2013 Supp. 71-1201 provides the two procedures for adding territory to a community college district:

> (a) The board of education of any unified district a part of which is in the community college district or which touches and adjoins a community college district may petition the state board for attachment of *the territory of such unified district* to the community college district for community college purposes. . . .
>
> (b) Any board of trustees may petition the state board for the attachment of *any adjoining territory* to the community college district. . . .[10]

In determining whether an area currently located in a community college district may be added to a different community college district, it is necessary to determine the meaning of "territory."

> The most fundamental rule of statutory interpretation and construction is that the intent of the legislature governs if that intent can be ascertained. We first attempt to ascertain legislative intent through the statutory language enacted, giving common words their ordinary meanings. When a statute is plain and unambiguous, we do not speculate as to the legislative intent behind it and will not read into the statute something not readily found in it. Where there is no ambiguity, we need not resort to statutory construction. Only if the statute's language or text is unclear or ambiguous do we use canons of construction or legislative history or other background considerations to construe the legislature's intent. In doing so, we may look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested. We cannot delete provisions or supply omissions in a statute. No matter what the legislature may have really intended to do, if it did not in fact do it, under any reasonable interpretation of the language used, the defect is one that the legislature alone can correct.[11]

Since adoption of the Kansas Constitution, the Kansas Legislature has been obligated to provide for intellectual, educational and scientific improvement of the citizenry, initially "by establishing a uniform system of common schools, and schools of a higher grade, embracing normal, preparatory, collegiate and university departments,"[12] and then "by

[10] Emphasis added.
[11] *State v. Prine*, 297 Kan. 460, 474-75 (2013) (internal citations omitted).
[12] Kan. Const., Art. 6, § 3 (Wyandotte Constitution).

establishing and maintaining public schools, educational institutions and related activities. . . ."[13] As a means of meeting this obligation, the Legislature early on authorized boards of education of cities of the first and second classes and boards of trustees of county high schools to "provide for an extension of the high-school course of study by establishing for high-school graduates a two-year course in advance of the course prescribed for accredited high schools"[14] that is "approximately equivalent to the course of study in the first and second years of accredited colleges."[15] The authority to establish such a program, "commonly known as [a] junior college," was extended to a "board of directors" of other qualifying school districts in 1937.[16] It appears that no school district extended beyond the boundaries of one county so the taxing district of a junior college consisted of one county or an area within one county.[17] Some territory in the state was not included in any school district and thereby was not paying any school taxes.[18]

Following adoption of the Unified School District Act of 1963, "all areas of the state [were] included in school districts."[19] The resulting school districts in some instances included territory from multiple counties.

As school unification was proceeding, the Community Junior College Act[20] was enacted. The act required preparation of a state plan that established not more than 22 community junior college areas.[21] Any existing junior college would, after submission of a petition to the state superintendent, be deemed a community junior college.[22] Any one or more interested school districts could petition for establishment of a community junior college within its or their community junior college area.[23] The act established minimum standards for the taxable property valuation of the proposed community junior college district and "potential student attendance volume within commuting distance in the area."[24] Governance of any junior college was thereafter transferred from a school district to an elected board of trustees.[25] The act provided the manner for determining "the territory of the community junior college district"[26] and precluded the inclusion of any land area into more than one community junior college district.[27] The act then set out the procedures through which territory could be added to a community junior college

[13] Kan. Const., Art. 6, § 1.
[14] L. 1917, ch. 283, § 1, codified at K.S.A. 72-3301 (repealed).
[15] L. 1917, ch. 283, § 3, codified at K.S.A. 72-3303 (repealed).
[16] L. 1937, ch. 302, § 1, codified at K.S.A. 72-3307 (repealed).
[17] *See Bd. of Trustees of Butler County Community College v. Bd. of County Comm'rs of Sedgwick County*, 257 Kan. 468, 475 (1995).
[18] *Hobart*, 230 Kan. at 379.
[19] L. 1963, ch. 393, § 1.
[20] L. 1965, ch. 417, §§ 1 – 16
[21] L. 1965, ch. 417, § 7(a), codified at K.S.A. 71-1003 (repealed).
[22] L. 1965, ch. 417, § 10(d), codified at K.S.A. 71-1103.
[23] L. 1965, ch. 417, § 8(a) codified at K.S.A. 71-1101.
[24] L. 1965, ch. 417, § 9, codified at K.S.A. 71-1102.
[25] L. 1965, ch. 417, § 13, codified at K.S.A. 72-6913 (repealed).
[26] L. 1965, ch. 417, § 10(e), codified at K.S.A. 71-1103.
[27] L. 1965, ch. 417, § 10(e), codified at K.S.A. 71-1103.

district.[28] This provision, which was codified at K.S.A. 71-1201, authorized the board of education of any unified district "a part of which is in the community junior college district or which touches and adjoins" a community junior college district to "petition . . . for attachment of the territory of such unified district to the community junior college district for junior college purposes." The boundaries of a community junior college district could then be the same as those of a school district that included land area in more than one county. Likewise, the board of trustees of a community junior college could "petition . . . for the attachment of any adjoining territory to the community junior college district."[29] Reading the provisions of the Community Junior College Act together, it is clear that the "territory" referred to in K.S.A. 2013 Supp. 71-1201 was territory that was not already included in another community junior college district.

Two years later, the "Community Junior College Election Act"[30] was enacted. Part of that act included repealing the provision in K.S.A. 71-1103 that expressly precluded the inclusion of an area in more than one community junior college district.[31] However, the minimum standards for the taxable property valuation and potential student attendance volume remained in effect, as did the limitation in the number of community junior college areas. We do not believe the repeal of this prohibition represented a change in legislative intent because, as a creature of statute, a community college can only act as authorized by the content of those statutes.[32]

In 1980, the Community College Act[33] was enacted, resulting in the amendment of over 50 statutes. Every public community junior college was thereafter designated a community college.[34] The act continued the minimum standards for taxable property valuation and potential student attendance volume and to recognize a state plan that included division of the state into not more than 22 community college areas.[35] K.S.A. 71-1201 was amended only as needed to change references from "community junior college" to "community college."[36]

The state plan for community colleges was no longer effective after July 1, 2000.[37] Amendments to K.S.A. 71-1201 in 1999 and 2011, however, did not affect the original intent of the statute. Territory that may be added to a community college district pursuant to K.S.A. 2013 Supp. 71-1201 is territory that is not already included within the territory of another community college district.

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[28] *See* L. 1965, ch. 417, § 11, codified at K.S.A. 71-1201.
[29] *Id*.
[30] L. 1967, ch. 407, §§ 1 – 18.
[31] *See* L. 1967, ch. 407, § 17.
[32] *See Kelly v. Kansas City*, 231 Kan. 751, 758-59 (1982). Because the power of agencies that are creatures of statute is dependent on statutes, "they must find within the statute warrant for the exercise of any authority which they claim."
[33] L. 1980, ch. 207, § 48, codified as K.S.A. 71-702.
[34] L. 1980, ch. 207, § 1, codified at K.S.A. 71-120.
[35] L. 1980, ch. 207, § 52, codified at K.S.A. 71-1003 (repealed).
[36] L. 1980, ch. 207, § 61.
[37] *See* L. 2000, ch. 86, § 7(e).

In summary, we conclude that an area that is currently included in a community college district may not be removed or transferred from such district. Territory that may be added to a community college district pursuant to K.S.A. 2013 Supp. 71-1201 is territory that is not already included within the territory of another community college district.

Sincerely,

Derek Schmidt
Attorney General

Richard D. Smith
Assistant Attorney General

DS:AA:RDS:sb