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May 28, 2025

ATTORNEY GENERAL OPINION NO. 2025-10

John S. Robb
Counsel for Unified School District No. 261
110 East Broadway
Newton, Kansas 67114

Re: Schools—School District Board of Education Powers and Duties—Boards of Education; Meeting Times; Quorum; Abstention from Voting; General Powers; Legal Counsel for Officers and Employees

Schools—School District Bonds and Capital Improvement State Aid—General Obligation Bonds; Purpose for Issuance; When Election Required; Contest of Validity; Limitations; Temporary Notes, Tax Levy

Schools—Capital Outlay State Aid—Capital Outlay Fund; Use of Moneys; Investments Authorized

Synopsis: Kansas law allows a school district board of education to expend funds to improve leased property. General obligation bonds may fund improvements to leased properties that are necessary for school district purposes. However, capital outlay funds may not be used to improve leased properties. Cited herein: K.S.A. 72-1138; K.S.A. 72-3216; K.S.A. 72-5457; K.S.A. 72-53,116.

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Dear Mr. Robb:

As counsel for Unified School District No. 261, you ask:

(1) Whether a lease creates a sufficient property interest for a school district to have the authority to expend district funds to improve and operate district programs upon the leased property; and

(2) Because a lease is a recognized legal interest in property, does a school district that leases property from a city or others have the authority under K.S.A. 72-5457 (school bond funding) or K.S.A. 72-53,116 (capital outlay funding) to expend capital outlay funds or issue bonds for a project to construct, reconstruct, make additions to, or generally improve leased property.

In your request for opinion, you state that the City of Haysville owns what is known as the Plagens Carpenter Sports Complex within the city of Haysville, Kansas. USD 261 currently uses the Plagens complex for district baseball, softball, and other uses under an annual "Use Agreement" with the city. USD 261 proposes to enter into a long-term written lease of the Plagens complex and then spend district funds to improve it and make it more suitable for district uses. The improvements might include, among other things, installing turf fields, improved lighting, scoreboards, improved fencing, seating storage, and improved parking areas. USD 261 would then use the improved complex for school district purposes and athletics and would also give the City of Haysville the non-exclusive right to use the facilities and improvements when the district is not using the facilities under a written use agreement.

Section 5 of Article 6 of the Kansas Constitution provides that "[l]ocal public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards." A school board is expressly permitted to enter into written contracts for the use of real or personal property and to enter into lease-purchase agreements.[1] "Such lease or lease-purchase agreement may provide for annual or other payment of rent or rental fees and may obligate the school district to payment of maintenance or other expenses."[2]

Historically, a school board had only such power and authority as was granted by the Legislature, either expressed or by clear implication.[3] In 2003, however, the Legislature conferred upon school boards limited home rule authority.[4] A school board now has authority under K.S.A. 72-1138(e) to "transact all school district

[1] K.S.A. 72-1149.
[2] *Id.*
[3] *See generally State ex rel. McAnarney v. Rural High Sch. Dist. No. 7*, 171 Kan. 437, 441, 233 P.2d 727 (1951).
[4] L. 2003, ch. 40, § 1; Att'y Gen. Op. No. 2011-12.

business and adopt policies that the board deems appropriate to perform its constitutional duty to maintain, develop and operate local public schools," provided the board's actions are in "compliance with state law."

> While the home rule authority conferred upon a board is not as extensive as the authority conferred upon a city or county in that a board may not exempt itself from state law, the home rule authority is similar in allowing a board to supplement state law when performing its duty to maintain, develop and operate local public schools.[5]

Before K.S.A. 72-1138(e) was enacted, this Office considered whether a school board may expend district funds for improvements on property it did not own.

In Attorney General Opinion No. 79-82, it was determined that a school board lacks authority to expend any of the district's funds for improvements to any property other than property belonging to the district or in which the district has a property interest.[6] In making this decision, the Opinion relied on K.S.A. 72-8212 (now codified at K.S.A. 72-3216), which provided that: "The board shall have title to . . . all school buildings and other property belonging to the district."[7] It was therefore determined that a school board has no authority to expend district funds to construct and maintain diagonal parking facilities on property owned by a city.[8] However, because the school district held a vested right of access to and from existing public streets, the school district could expend funds to provide entrances from a public street to a school parking lot.[9]

In Attorney General Opinion No. 93-146, it was opined that a school district does not have the authority to pave county roads, install traffic signals at an intersection of county roads, or make annual payments to a city to provide for the maintenance of streets and services.[10] The Opinion noted that K.S.A. 72-6761 (now codified at K.S.A. 72-5457) permitted a school board to issue bonds to "purchase or improve a site or sites, or to acquire, construct, equip, furnish, repair, remodel or make additions to any building or buildings used for school district purposes."[11] However, citing Attorney General Opinion No. 79-82, the Opinion found that improvements funded through bonds may be undertaken only in light of the school board's authority as set forth in what is now K.S.A. 72-3216.[12]

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[5] Att'y Gen. Op. No. 2011-12.
[6] Att'y Gen. Op. No. 1979-82.
[7] *Id*; *see also* K.S.A. 72-3216(d)(1).
[8] *Id.*
[9] *Id.*
[10] Att'y Gen. Op. No. 1993-146.
[11] *Id*; *see also* K.S.A. 72-5457(a).
[12] *Id.*

The minutes leading to passage of the limited home rule authority in K.S.A. 72-1138(e) indicate that the purpose of the provision was to eliminate the concept that school boards may only take actions that are specifically authorized by law.[13] The law was meant to "provide schools with more flexibility in their operations" and "reduce the need for the Legislature to consider bills to authorize school boards to take 'common sense' actions on a local level every year."[14] Proponents of the provision agreed it would help eliminate the need for bills each session adding statutory permission for a district to take care of items belonging distinctively to that district.[15] Ultimately, K.S.A. 72-1138(e) was intended to allow school districts "to take action unless prohibited by statute."[16]

We are unable to find any statute, including K.S.A. 72-3216, that would prevent a school board from expending district funds to improve and operate district programs on leased property. K.S.A. 72-3216(d)(1), which is notably contained in article 32, entitled "SCHOOL CURRICULUM," and not article 11, entitled "SCHOOL DISTRICT BOARD OF EDUCATION POWERS AND DUTIES," provides that the school board has title to all school buildings and other school property and may open any school building for community purposes, and it provides a procedure to disposing of school properties no longer needed. The statute does not touch on or imply that improvements may only be made to property owned by the district.

In fact, even before K.S.A. 72-1138(e) was adopted, school districts were permitted to make capital improvements on property that was leased from certain entities.[17] A recreation commission is permitted to lease real property to a school district under K.S.A. 12-1928(h).[18] In Attorney General Opinion No. 93-129, it was determined that, under K.S.A. 12-1924, a school district had the authority to make capital improvements on real property belonging to a recreation commission that was leased to the district for baseball and softball use.

Given the adoption of K.S.A. 72-1138(e), a school board is permitted to expend district funds to improve leased property in order to better operate district functions.

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[13] *Minutes, Hearing on S.B. 57 before the S. Education Committee*, 2003 Legislative Session (January 30, 2003) (testimony of Mark Tallman). To the extent the language is not clear, courts consider the legislative history of statutes to determine the legislature's intent. *Ambrosier v. Brownback*, 304 Kan. 907, 911, 375 P.3d 1007 (2016).

[14] *Minutes, Hearing on S.B. 57 before the S. Education Committee*, 2003 Legislative Session (January 30, 2003) (testimony of Mark Tallman).

[15] *Minutes, Hearing on S.B. 57 before the S. Education Committee*, 2003 Legislative Session (January 30, 2003) (testimony of Jacque Oakes).

[16] *Minutes, Hearing on S.B. 57 before the S. Education Committee*, 2003 Legislative Session (January 30, 2003) (testimony of Gary George).

[17] Att'y Gen. Op. No. 1993-129.

[18] *See also* Att'y Gen. Op. No. 1993-129.

Next, we consider whether K.S.A. 72-5457 (school bond funding) or K.S.A. 72-53,116 (capital outlay funding) permit issuing bonds or expending capital outlay funds for a project to construct, reconstruct, make additions to, or generally improve leased property.[19]

K.S.A. 72-5457(a), which governs the use of general obligation bonds provides, in part:

> The board of education of a school district is authorized to select any site or sites necessary for school district purposes. When a board determines that it is necessary to purchase or improve a site or sites, or to acquire, construct, equip, furnish, repair, remodel or make additions to any building or buildings used for school district purposes . . . the board may submit to the electors of the unified district the question of issuing general obligation bonds for one or more of the above purposes, and upon the affirmative vote of the majority of those voting thereon, the board shall be authorized to issue the bonds.

K.S.A. 72-53,116(a), which governs the use of capital outlay funds provides, in part:

> Any moneys in the capital outlay fund of any school district and any moneys received from issuance of bonds under K.S.A. 72-53,117 or 72-53,122, and amendments thereto, may be used for the purpose of the acquisition, construction, reconstruction, repair, remodeling, additions to, furnishing, maintaining and equipping of school district property and equipment necessary for school district purposes . . . .

Looking first at school bonds, the funds may be used to "improve a site" or "remodel or make additions to any building or buildings used for school district purposes."[20] This language does not require that bond money be used only on district-owned property.

The legislative history of K.S.A. 72-5457(a) also reveals that the Legislature intended a site necessary for school district purposes to be broad enough to include sites not owned by the district. When originally enacted, the precursor to K.S.A. 72-5457(a) began: "The board shall have authority to select a *school* site or sites. When a board

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[19] Although not part of your inquiry, moneys from a community foundation under K.S.A. 72-1174 could potentially fund improvements to leased property. Under K.S.A. 72-1174, the school board may transfer money that was derived from gifts or donations to the district to a community foundation, which then deposits the money into a restricted fund. The money is subject to any restrictions imposed by the original donor. A distribution from the fund shall be made for (1) the benefit of the district or (2) a specific purpose as directed by the original donor and agreed to by the district. K.S.A. 72-1174(b).
[20] K.S.A. 72-5457(a).

determines that it is necessary to purchase or improve a *school* site or sites . . . ."[21] In 1981, the Legislature amended the statute to include not just school sites, but "any site or sites necessary for school district purposes."[22] Then in 1993, the Legislature also added the language: "To the extent that the provisions of any other law pertaining to the determination of limitations on bonded debt of school districts conflict with the provisions of this section, the provisions of this section shall control."[23]

Because the leased property is a site necessary for school district purposes, school bonds may be used to improve that site.

Turning to capital outlay funds, they are limited to use in acquiring or improving *school district property or equipment*.[24] The legislative history of K.S.A. 72-53,116 reveals the Legislature intentionally restricted the use of capital outlay funds to property owned by the district. In 2013, the Legislature amended the relevant language, which previously provided that capital outlay funds may be used to acquire and improve "buildings necessary for school district purposes."[25] The Legislature removed the general building language and replaced it with the "school district property or equipment" contained in the statute today.[26]

Because the leased property is not school district property or equipment, capital outlay funds may not be used to improve that property.

In sum, we believe that, following the enactment of K.S.A. 72-1138(e), Kansas law allows school districts to expend funds to improve leased properties. And while capital outlay funds may not be used for such purposes, general obligation bonds may fund the costs of improving the property for the benefit of the school district's use of the leased property.

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[21] L. 1963, ch. 393, § 28 (emphasis added).
[22] L. 1981, ch. 286, § 1.
[23] L. 1993, ch. 39, § 1.
[24] K.S.A. 72-53,116. As explained in Att'y Gen. Op. No. 2003-34, Section 5 of Article 11 of the Kansas Constitution, which states that "[n]o tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied," precludes capital outlay funds from being used for any purpose other than the purposes outlined in K.S.A. 72-53,116.
[25] L. 2013, ch. 99, § 6.
[26] *Id.*

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Andrew J. Lohmann

Andrew J. Lohmann
Assistant Solicitor General