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February 10, 2026

ATTORNEY GENERAL OPINION NO. 2026-5

The Honorable Samantha M. Poetter Parshall
State Representative, 6th District
Kansas State Capitol, Room 168-W
300 SW 10th St.
Topeka, Kansas 66612

Re: State Institutions and Agencies; Historical Property—State
Educational Institutions; Management and Operation—Certain
Persons Without Lawful Immigration Status Deemed Residents for
Purpose of Tuition and Fees

Synopsis: K.S.A. 76-731a provides certain illegal aliens with in-state tuition at
Kansas postsecondary educational institutions. Because this statute
provides a tuition benefit not available to U.S. citizens and provides an
impermissible public benefit, the statute violates federal law. Cited
herein: K.S.A. 76-731a.

* * *

Dear Representative Parshall:

As State Representative for the 6th District, you ask whether K.S.A. 76-731a, which grants in-state tuition for certain aliens who are not lawfully present in the United States, *i.e.*, illegal aliens, violates federal law. The U.S. Constitution's Supremacy Clause mandates that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary

notwithstanding.”¹ Accordingly, “any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield” to federal law.²

As explained below, K.S.A. 76-731a conflicts with 8 U.S.C. § 1623 and 8 U.S.C. § 1621. Accordingly, K.S.A. 76-731a violates federal law and is preempted.

8 U.S.C. § 1623(a) expressly bars an illegal alien from eligibility, on the basis of residence within a state or a political subdivision therein, for “*any* postsecondary education benefit,” unless a U.S. citizen is eligible for the same benefit (in no less an amount, duration, and scope) without regard to whether the citizen is a resident.³ Section 1623 sweeps widely, and it prohibits States from offering illegal aliens any postsecondary education benefit “on the basis of residence within a State.”

Legislative history furthers this statute’s plain meaning. Congress’s specific understanding of what 8 U.S.C. § 1623 (Section 505 of H.R. 2202) accomplishes is unambiguous. Congress intended to force States to choose between preserving a state system of preferential state public postsecondary education funding based on *bona fide* state legal residence, and offering in-state tuition to illegal aliens in defiance of federal law and policy. The consequence of choosing the latter course would be the virtual elimination of out-of-state tuition rates at state universities—something no state could afford. The House Conference Report accompanying H.R. 2202 explained this intent of Section 505 clearly: “This section provides that *illegal aliens are not eligible for in-state tuition rates* at public institutions of higher education.”⁴

K.S.A. 76-731a provides tuition benefits to illegal aliens on the basis of residence in three ways, and so it violates 8 U.S.C. § 1623.

- *First*, under K.S.A. 76-731a(a), certain illegal aliens are “deemed to be . . . resident[s] of Kansas.” Such deeming is solely for the purpose of making such illegal aliens eligible for postsecondary education benefits. Thus, K.S.A. 76-731 contravenes 8 U.S.C. § 1623 by operating on the basis of residence.
- *Second*, under K.S.A. 76-731a(b)(2)(A), Kansas postsecondary educational institutions are required to offer the postsecondary education benefit to illegal aliens who have attended accredited Kansas high schools for three or more years. Eligibility to attend an accredited Kansas high school is based on residency within the State of Kansas. Residency in Kansas triggers a constitutional and statutory right “to attend the public schools.”⁵ Thus, it is

¹ U.S. Const. art. VI, cl. 2.

² *Gade v. Nat’l Solid Wastes Mgmt Assn.*, 505 U.S. 88, 108 (1992).

³ (emphasis added).

⁴ Conference Report 104-828, H.R. 2202 (Sept. 24, 1996) (emphasis added).

⁵ See *Nutt v. Bd. of Educ. of City of Goodland, Sherman Cnty.*, 128 Kan. 507, 508, 278 P. 1065 (1929).

an illegal alien's Kansas residency that entitles him to attend a Kansas high school, which in turn entitles him to postsecondary education benefits.

- *Third*, under K.S.A. 76-731a(c)(2), an alien who is eligible for fees and tuition for “residents” of another state is deemed ineligible for the postsecondary education benefit offered by the State of Kansas. Thus, being a resident of another state disqualifies an illegal alien from obtaining this education benefit. Therefore, only an illegal alien who is a resident of Kansas is eligible to receive the postsecondary education benefit. This eligibility violates 8 U.S.C. § 1623.

In summary, K.S.A. 76-731a directly conflicts with federal law because it permits illegal aliens to qualify for in-state tuition rates without providing the equivalent benefit to U.S. citizens without regard to residency. It is therefore preempted. Kansas has been violating this federal law ever since K.S.A. 76-731a(b)(2) was enacted.

Additionally, K.S.A. 76-731a also runs afoul of a second statute—8 U.S.C. § 1621. Since 1996, a non-U.S. citizen who is not a “qualified alien” as defined in 8 U.S.C. § 1641, an alien with valid nonimmigrant status under the Immigration and Nationality Act, or an alien paroled into the United States under 8 U.S.C. § 1182(d)(5), is not eligible for any “State or local public benefit.”⁶ An illegal alien is not a “qualified alien” as defined in 8 U.S.C. § 1641. A “State or local public benefit” includes “any . . . postsecondary education . . . or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.”⁷

Kansas state government agencies that are classified as “postsecondary educational institutions” under Kansas law⁸ are bound by 8 U.S.C. § 1621. Payment of tuition at greatly reduced rates is therefore a public benefit forbidden to illegal aliens. Congress provided states and local governments with a single loophole, found in 8 U.S.C. § 1621(d), by which an alien who is not lawfully present in the United States may be made eligible for a public benefit. Such eligibility may be provided “only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.”⁹

The legislative history of 8 U.S.C. § 1621(d) makes clear that any state seeking to provide public benefits to illegal aliens, and to avoid the general prohibition of such

⁶ 8 U.S.C. § 1621(a).

⁷ 8 U.S.C. § 1621(c).

⁸ K.S.A. 74-3201b(h).

⁹ 8 U.S.C. § 1621(d).

benefits under 8 U.S.C. § 1621, must specify that “illegal aliens” are eligible for such benefits and must reference 8 U.S.C. § 1621(d):

No current State law, State constitutional provision, State executive order or decision of any State or Federal court shall provide a sufficient basis for a State to be relieved of the requirement to deny benefits to illegal aliens. Laws, ordinances, or executive orders passed by county, city or other local officials will not allow those entities to provide benefits to illegal aliens. *Only the affirmative enactment of a law by a State legislature and signed by the Governor after the date of enactment of this Act, that references this provision, will meet the requirements of this section.* The phrase “affirmatively provides for such eligibility” means that the State law enacted must specify that illegal aliens are eligible for State or local benefits. Persons residing under color of law shall be considered to be aliens unlawfully present in the United States and are prohibited from receiving State or local benefits, as defined, regardless of the enactment of any State law.¹⁰

K.S.A. 76-731a does not meet the statutory requirements of the loophole in 8 U.S.C § 1621(d) because, among other reasons:

- The terms “illegal alien” and “alien who is not lawfully present in the United States” are used synonymously in 8 U.S.C. § 1621(d). K.S.A. 76-731a uses the undefined term “person without lawful immigration status.”
- K.S.A. 76-731a does not specify that “illegal aliens” are eligible for state or local benefits, and thus fails to use the express statutory language required by federal law.
- K.S.A. 76-731a does not reference the provisions of 8 U.S.C. § 1621(d), as intended by Congress.

K.S.A. 76-731a provides an impermissible public benefit outside the limited confines of 8 U.S.C § 1621(d), and so it violates the statute. This current Kansas law violates two federal statutes.

Kansas was one of several states that enacted statutes giving illegal aliens in-state tuition rates between 2002 and 2008. For years, those states violated federal law with impunity. In 2025, however, the U.S. Department of Justice began suing those states. To date, seven states have been sued for unlawfully providing in-state tuition benefits for illegal aliens.¹¹ The Department of Justice has already

¹⁰ 104th Cong., 2nd Session., Conference Report No. 104-725 on H.R. 3734 (July 31, 1996), at 383 (emphasis added).

¹¹ See U.S. Dep’t of Just., *The Justice Department Files Complaint Challenging Virginia Laws Providing In-State Tuition and Financial Assistance for Illegal Aliens* (Dec. 30, 2025), <https://www.justice.gov/opa/pr/justice-department-files-complaint-challenging-virginia-laws->

successfully settled two of these suits.¹² Based on the plain language of the relevant statutes, K.S.A. 76-731a violates federal law and so is preempted. Accordingly, if Kansas were to be sued by the federal government over this statute, Kansas would likely lose the lawsuit.

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Adam T. Steinhilber

Adam T. Steinhilber
Assistant Solicitor General

providing-state-tuition-and (noting lawsuits against Texas, Kentucky, Illinois, Oklahoma, Minnesota, California, and Virginia).

¹² See Order and Final Judgment, *United States v. Oklahoma*, No. 6:25-cv-00265-RAW-DES (E.D. Okla. Aug. 29, 2025), Dkt. 23; Order and Final Judgment, *United States v. Texas*, No. 7:25-cv-00055-O (N.D. Tex. June 4, 2025), Dkt. 8.