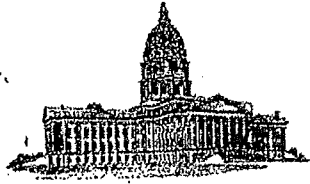


STATE OF KANSAS  
HOUSE OF REPRESENTATIVES



MICHAEL R. (MIKE) O'NEAL  
SPEAKER

March 31, 2010

Mary Ann Torrence  
Revisor of Statutes  
Kansas Statehouse, STE 24-E  
300 S.W. 10th Ave.  
Topeka, KS 66612-1592

Alan Conroy  
Director of Kansas Legislative Research Dept.  
Kansas Statehouse, Rm. 68-W  
300 S.W. 10<sup>th</sup> Ave.  
Topeka, KS 66612-1504

Dale Dennis  
Deputy Commissioner of Education  
Kansas State Dept. of Education  
120 S.E. 10th Ave.  
Topeka, KS 66612

Dear Ms. Torrence, Mr. Conroy and Mr. Dennis,

Although it may be unusual to make a joint request of this sort, it should become clear as I explain the following information sought by the Legislature why you all are needed to collaborate for its production. Given the current condition of state finances, the Legislature requires a definitive opinion about the status of hundreds of millions of dollars that are represented in the official annual report of unencumbered carryover balances being administered by USDs statewide.

While everyone appreciates that there may be prudent reasons for earmarking certain USD funds and maintaining reasonable reserves, we must distinguish between USD fiscal transactions that are legally required or precluded and those which are done for other, more discretionary, reasons. Furthermore, this information may be crucial to this session's state budget deliberations, so we need it soon.

Therefore, I request that Revisor Torrence produce a formal written opinion that the Legislature may rely upon identifying which USD funds are truly legally unencumbered. I anticipate that the Revisor will need counsel from the Commissioner regarding USD accounting practices and from Director Conroy regarding applicable statutes and state and federal appropriations practices in forming the legal opinion. Commissioner Dennis and Director Conroy should then use that opinion in quantifying the unencumbered carryover balances, by fund, for each USD. Director Conroy should have final responsibility for verifying the data's reliability before formatting it for publication to the legislators. Therefore, I respectfully ask that all parties cooperate fully and promptly with one another.

**PLAINTIFFS'**  
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To avoid any misunderstanding, I'll frame the legal questions for the Revisor as follows:

- a. What funds are USDs statutorily, or via formal state or federal rules or regulations, precluded from spending down and/or transferring money out for any purpose other than the defined and quantified obligation the fund was explicitly created to satisfy? Please specify which such restrictions apply to each fund or account, and explain which law, rule or regulation must change in order to eliminate such restrictions.
- b. What funds are USDs statutorily, or via formal state or federal rules or regulations, obligated to transfer/deposit money into at least annually for a defined and quantified purpose? For each such obligation, please specify the timing and amount of each required transfer or deposit, including the fund or account from which the money is taken and the fund or account to which the money is transferred or deposited.

To further clarify and explain, I use "obligation" to mean a legally enforceable mandate upon the USD or a quantified financial promise – i.e., an encumbrance or account payable – to which the USD is contractually bound. The second question I asked above is to discern what future encumbrances are discretionary and may therefore, at least temporarily, be avoided. By postponing deposits into an encumbered fund, the USD may then be free to expend that money for other general purposes. I therefore see this as an important secondary question in the case of any particular fund that you may find to be legally encumbered.

With a clear legal opinion in hand that so defines an encumbered fund, I ask the Director and the Deputy Commissioner to promptly produce the following data for public distribution:

A projection of FY2010 year-end unencumbered fund balances, by each fund, for each USD statewide, using the following methodology and showing the amounts for each item:

- Beginning unencumbered cash balance as of July 1, 2009, plus
- Transfers in from other funds, plus
- Direct deposits into the fund, plus
- Cancellation of prior years' encumbrances, minus
- Expenditures in satisfaction of prior years' encumbrances, minus
- Expenditures for FY 2010 obligations (excluding payments for prior years' encumbrances), minus
- Transfers out to other funds, equals
- Ending unencumbered cash balance for FY 2010 as of June 30, 2010.

For the sake of simplicity, assume that all FY 2010 obligations will be paid in FY 2010 so as to avoid having to estimate which obligations will be paid and which will be encumbered and paid in FY 2011. Also assume that all payments due to USDs in FY 2010 will be received by them in FY 2010. For each fund transfer in or out, please also specify the names of the funds on both ends of each transaction.

Again, I appreciate that there may be sound reasons for a local school board to have adopted its own policies that control its accounting practices and its earmarking and dedication of revenues and funds. My questions, however, concern what a USD is legally bound to do or is legally prohibited from

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doing. Any and all reasons in defense of a relevant local fiscal policy that is not legally mandated by the state or federal government are immaterial to the information I request.

On the chance that this requested data may prove important to our state budget debates this session, I ask that Revisor Torrence's opinion be completed promptly so that Director Conroy and Deputy Commissioner Dennis' related report can then be assembled and delivered to my office no later than the April 2010 release of the Consensus Estimating Group's state revenue projections.

Sincerely,

Michael R. O'Neal  
Speaker, Kansas House of Representatives