



STATE OF KANSAS

*Office of the Attorney General*

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER  
Attorney General

September 18, 1975

ATTORNEY GENERAL OPINION NO. 75- 367

Mr. Randall D. Palmer  
Legislator  
National Bank Building  
Pittsburg, Kansas 66762

RE: Podiatry--Limitation of Practice

Synopsis: K.S.A. 65-2002 limits but does not prohibit podiatrists from performing surgery.

Dear Mr. Palmer:

You have requested my opinion as regards an interpretation of K.S.A. 65-2002 which deals with the practice of podiatry. In particular, you ask about the apparent discrepancy between the title and text of this statute.

The text of the statute is thus:

65-2002. LICENSE REQUIRED; SURGERY PROHIBITED.  
"It shall be unlawful for any person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise or hold himself out to the public as a podiatrist or chiropodist, or to use any sign or advertisement with the word 'podiatrist,' 'foot expert,' 'practapedist' or 'chiropodist,' or any other term or terms indicating that he is a chiropodist or podiatrist or that he practices or holds himself out as practicing podiatry or foot correction in any manner, without first obtaining from the state podiatry board of examiners a license authorizing the practice of podiatry in this state, except as herein-after provided. No podiatrist shall amputate the human foot or toes, neither shall any podiatrist administer any anesthetic other than local: Provided, however, This act shall not prohibit the recommendation, advertising, fitting or sale of corrective shoes, arch

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supports, or similar mechanical appliances, or foot remedies by manufacturers, wholesalers, or retail dealers."

[Emphasis supplied.]

The title of this statute indicates that a podiatrist is prohibited from performing all surgery while the text implies a podiatrist is only limited in the type of surgery he may perform.

My predecessor in office, Attorney General Vern Miller, considered this apparent contradiction in Opinion No. 73-404 (copy enclosed). It was his opinion that podiatrists were only limited by the specific prohibition of the text. In other words, podiatrists are allowed to perform surgery but may not amputate the foot or toes or administer a general anesthetic. Attorney General Miller indicated a more proper title for K.S.A. 65-2002 may have been "license required, certain surgery prohibited." I am in agreement with Attorney General Miller's opinion.

In addition, and more fundamentally, I should point out that the language which has been referred to as the "title" of the statute is merely descriptive editorial language supplied by the Revisor of Statutes for reader guidance and assistance in reviewing statutory language. That language is not part of the statute, and in no way has the force and effect of law.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS/PAH/ksn

Enclosure



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December 3, 1973

Opinion No. 73-404

Dr. Donald A. Mahrle  
President  
Board of Podiatry Examiners  
292 New Brotherhood Building  
Kansas City, Kansas 66101

Dear Doctor Mahrle:

This is in response to your request concerning K.S.A. 65-2002 which covers license requirement and practice limitation. The point raised is the effect of an apparent discrepancy between the title and the text of the statute; specifically, the title uses the term surgery and the text refers to amputation.

The Kansas Constitution, in article 2, § 16, provides in part:

"No bill shall contain more than one subject, which shall be clearly expressed in its title, . . ."

The Kansas Supreme Court, throughout its history, has had acts of the legislature before it to be construed against this constitutional provision. One early decision stated the Court's position as follows:

"In determining whether a particular act is subject to the objection urged [i.e. section 16 of article 2] courts are controlled by the following rules, . . .  
(1) The constitution should be liberally construed to give to the lawmaking power all freedom not positively prohibited by the constitution; (2) the act under consideration should be given a liberal construction, and all doubts will be resolved in favor of its constitutionality, for the purpose of carrying into effect the will of the legislature." In re Schley, 71 Kan. 266.

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This is but another way of stating a maxim of interpretation that a properly enacted statute is presumed to be constitutional.

The text of K.S.A. 65-2002 sets out that it shall be unlawful for anyone to practice podiatry, defined as the diagnosis and treatment of all illnesses of the human foot, without a license. It further provides that a podiatrist so licensed shall not amputate the human foot or toes nor administer any anesthetic other than local. Therefore a cursory reading of the statute shows that podiatrists are licensed to deal with all illnesses of the human foot except for amputation and the giving of any general anesthetic. This presumably was the legislative intent.

However, the title to K.S.A. 65-2002 provides: "License required; surgery prohibited." It was said in Westover v. Schaffer, 205 Kan. 62, citing Water District No. 1 v. Robb, 182 Kan. 2, that:

"The purpose of a title is to direct the mind to the contents of a bill or of an act, so that members of the legislature and the public may be fairly informed and not deceived or misled as to what it embraces."

K.S.A. 65-2002's title directs the mind to two items -- a license requirement and prohibition of surgery of some description. The text provides that description in prohibiting the amputation of the human foot or toes. The question posed is whether the title expresses the subject of the act as required by article 2, § 16.

In Miller v. Miller, 113 Kan. 22, the Court stated:

"The rule has been announced in many cases that section 16 of article 2 of the constitution is not to be construed in any narrow or technical spirit. It must be applied in a fair and reasonable way. It is sufficient if the title fairly indicates, in general terms, its scope and purposes."

The use of "surgery" in the title is a general term to indicate the purpose of the act but its use is doubtful to delineate the scope. In Allen v. Hopkins, 62 Kan. 175, the Court stated with regard to words in a title:

". . . but there is often no way by which our duty to uphold and cause the execution of acts of the legislature can be performed without transposing, interpolating and eliminating words and phrases, so as to give effect to the obvious legislative intent."

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On the basis, in the present case, that the legislative intent was to prohibit podiatrists from the amputation of feet and toes and from administering any general anesthetic, it would be necessary to interpolate a word in the title. Such a word could be "certain" before "surgery." So construed, the title thus indicates the scope and the purpose of the act.

If we may be of further assistance, please feel free to contact us.

Yours very truly,

VERN MILLER  
Attorney General

VM:DMH:jsm