



STATE OF KANSAS

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**Curt T. Schneider**  
Attorney General

December 11, 1975

ATTORNEY GENERAL OPINION NO. 75-454

Honorable H. Michael Nichols  
Probate Judge  
Franklin County Court Building  
3rd and Main Streets  
Ottawa, Kansas 66067

Re: Marriages--Probate Court--Restrictions on performing

Synopsis: Interpretation of phrase "adjudged incapacitated person" contained within K.S.A. 23-120 refers to the conditions contained within K.S.A. 77-201(31) and K.S.A. 59-3002(1) as so determined to exist pursuant to the provisions of K.S.A. 1974 Supp. 59-3001 et seq.

\* \* \*

Dear Judge Nichols:

You have asked our opinion as to the definition and meaning of the phrase "adjudged incapacitated person" as used in K.S.A. 23-120.

Both K.S.A. 1974 Supp. 77-201(31) and K.S.A. 1974 Supp. 59-3002(1) define "incapacitated person" as follows:

"The term 'incapacitated person' shall mean any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic narcotic addiction, chronic intoxication or other cause to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning either his person or his estate."

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It would follow therefore, that a person exhibiting any of the conditions or combinations thereof set out above would be a "incapacitated person" within the meaning of K.S.A. 23-120. Further, it should be noted that a person who has been found to be a "mentally ill person" is not automatically deemed to be an incapacitated person. 10 Washburn Law Journal 239, 245, (1971). Determination of the question posed herein would, then, turn upon an application of the term "adjudged" as used in the phrase in question.

It appears to be well settled that the term "adjudicate" involves the process of a judicial determination by court or tribunal. As stated by our Supreme Court:

"Adjudicate means to hear or try and determine judicially; to settle by judicial decree."  
Waugh v. American Casualty Co., 190 Kan. 725,  
378 P.2d 170 (1963).

"Adjudicate" is in its strictest sense synonymous with "adjudged". Leonard v. Leonard, 88 Idaho 485, 401 P.2d 541. To "adjudge" means to "decide or rule upon as a judge or with judicial or quasi judicial powers. State v. Overby, 166 S.E. 2d 451, 4 N. Carolina App. 280..

With the terms "incapacitated person" and "adjudged" thus defined, it is necessary to determine the legislative intent evidenced by the utilization of the terms within the context of K.S.A. 23-120. This can be determined by a perusal of statutory provisions that speak to the circumstances under which a person can legally be "adjudged" an "incapacitated person". The provisions for making such an adjudication are found in K.S.A. 1974 Supp. 59-3001 et seq. Notwithstanding the fact that the latter enactment is referred to in K.S.A. 1974 Supp. 59-3001 as "the act for obtaining a guardian or conservator or both", the act in essence provides for a judicial procedure to "adjudicate" an individual an "incapacitated person". Insofar as the provisions of K.S.A. 1974 Supp. 59-3001 et seq. provide the only methodology by which an individual can be "adjudged an incapacitated person", it must therefore follow that the phrase "adjudged incapacitated person" as used in K.S.A. 23-120 refers to that legal status that attaches subsequent to the

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exercise of the provisions of K.S.A. 1974 Supp. 59-3001 et seq.  
by a probate court.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER  
Attorney General

CTS/MBR/cgm