



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 20, 1977

ATTORNEY GENERAL OPINION NO. 77- 131

Mr. John Dekker
City Attorney of Wichita, Kansas
City Building
Wichita, Kansas 67203

Re: Adult Care Homes--Religious Orders and Bodies--
Licensure Requirements

Synopsis: An infirmary of a religious order which falls within the definition of an adult care home must apply for a license from the Kansas State Department of Health and Environment.

* * *

Dear Mr. Dekker:

You have inquired as to whether or not an infirmary located within a convent owned and operated by a religious order is required by state law to obtain a license as an adult care facility. As you are aware, the Sisters of the Adorers of the Blood of Christ and the Sisters of St. Joseph both maintain accommodations in their respective institutions as retirement areas for aged, infirm or disabled Sisters. These facilities are not open to the public and there is absolutely no intention to ever offer retirement services to persons other than members of these religious groups.

An initial inquiry which arises is whether or not these facilities fall within the definition of an adult care facility which is found at K.S.A. 1976 Supp. 39-923, and states:

"'Adult care home' shall mean all classification of homes required

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to be licensed by the secretary
of health and environment."

The particular classifications of adult care homes are also found in K.S.A. 1976 Supp. 39-923 and are as follows: skilled nursing homes, intermediate nursing care homes, intermediate personal care homes, one and two bed adult care homes and boarding care homes. In analyzing the facts which you have presented to me, it would appear that the two facilities about which you have inquired would be classified as a skilled nursing home, an intermediate nursing care home or an intermediate personal care home.

Once it has been determined that these facilities are indeed adult care homes, one must then look to K.S.A. 1976 Supp. 39-926 which sets forth the following requirements for licensing:

"It shall be unlawful for any person or persons acting jointly or severally to conduct, maintain or operate, or permit to be maintained or operated; or to participate in the conducting, maintenance, or operation of an adult care home within this state except upon license first had and obtained for that purpose from the secretary of health and environment as the licensing agency upon application made therefor as provided in this act, and compliance with the requirements, standards, rules and regulations, promulgated under its provisions."

It is urged that the infirmary does not constitute an adult care home under K.S.A. 1976 Supp. 39-923, in which such facilities are defined to include

"any place or facility. . . caring for three (3) or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage. . . ."

Those who are cared for in these facilities include only members of the respective Orders, who have taken vows of poverty, chastity

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and obedience. Each member is wholly dependent upon the religious community for sustenance, housing, education, health care, and all other necessities of life. Due to these factual circumstances, it is suggested that the sisters are owners themselves, who provide services only for themselves, and thus not for any person not related to an owner of the facility.

Cast in more traditional legal terms, it is urged that the members of the Order are tenants in common of the facility. From the standpoint of traditional property concepts, this argument is not defensible, in my judgment. These facilities are the property of the respective Orders, and the Sisters themselves by virtue of their vows hold individually no legal or equitable property interest in the facilities, or in any other real property of their respective Order or Province. For example, you advise that the Motherhouse campus of the Sisters of St. Joseph includes the home offices of the Order, a large chapel for religious worship, living quarters for all Sisters assigned to the Motherhouse, the cemetery, and Marian Hall, a retirement center designed to accommodate approximately 40 aged, infirm or disabled Sisters. In the case of the Adorers of the Blood of Christ, the Motherhouse facility includes the Provincial administration offices, a large chapel for religious worship, living quarters for all Sisters assigned to the Motherhouse, a retreat center, an infirmary and a cemetery. In my judgment, in each instance, the members of the Order and Province cannot justifiably be deemed to be joint tenants or tenants in common of any of the real property of their respective religious communities, and thus all of the resident Sisters may not be deemed "owners" of the property so as to exempt the facilities from K.S.A. 1976 Supp. 39-941. Without having any technical documents of title before me, the property is held presumptively by the Order and Province, respectively, or by other ecclesiastical entities, or societies. Whatever the doctrinal relationships which exist among members of each religious community I cannot conclude that individual Sisters of the Order or Province may themselves claim any individual property interest in any of the property of the respective motherhouses, and hence, none stand as the owner of the property so as to exempt it from the statutory definition.

Certainly, neither facility operates as an ordinary business or commercial entity in the furnishing of service to members of the religious community. However, the act regulating adult care homes is not addressed solely to those associated with the business of nursing homes. As originally enacted in 1961, K.S.A. 39-941 provided thus:

"Nothing in this act shall be construed
to apply to any licensed general hospital

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or any nursing care facility operated by and in conjunction with a licensed hospital any home or institution operated by any religious body or denomination or incorporated patriotic, fraternal or charitable organization; and no rules, regulations, or standards shall be made or established under this act for any nursing home, personal care home or boarding *adult care* home, conducted in accordance with the practice and principles of the body known as the Church of Christ Scientist, except as to the *construction*, sanitary and safe conditions of the premises, cleanliness of operation, and its physical equipment. . . ."

However, in 1972, the underscored language was deleted, and the italicized language added, thus expressly removing the former exemption for facilities operated by religious or incorporated patriotic, fraternal or charitable organizations. These amendments reflect a clear legislative intent to extend the application of the act to facilities other than those operated purely on a business or commercial basis. The amendment indicates an express legislative mandate that adult care homes such as those operated by the Sisters of St. Joseph and the Sisters of the Adorers of the Blood of Christ must, in fact, be licensed.

Accordingly, after consideration of the facts and circumstances described above, it is my opinion that the facilities fall within the scope of K.S.A. 1976 Supp. 39-923, and are subject to the licensure requirements of that act.

This conclusion may well work unnecessary hardship upon the Sisters of St. Joseph and the Sisters of the Adorers of the Blood of Christ, as well as other religious bodies which operate facilities for the care of their members. There appears to be no question but that the care provided in these facilities reflects a scrupulous and devoted concern for their residents, and it may be that compliance with state licensing requirements will require costly alterations to physical facilities which in many instances may not result in materially improved care. Certainly, the costs of compliance in some instances may make severe demands on the limited financial resources of various religious bodies. However, the legislature in 1972 repealed language which theretofore exempted such facilities from licensure, and I cannot ignore either the plain language of the statute or the manifest legislative intent. If relief is to be granted to relieve the Orders

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and other affected religious bodies from the licensure requirements, it must be sought from the legislature through efforts to restore the exemption in whole or in part.

Yours very truly,



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CTS:CAB:jj

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