



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

May 2, 1979

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 79-76

Mr. Charles V. Hamm
Chief Counsel
Department of Social and Rehabilitation Services
State Office Building
Topeka, Kansas 66612

Re: Infants--Crimes Affecting Children--Confidentiality
of Reports and Records

Synopsis: After an investigation and finding of reasonable grounds to believe abuse or neglect exists with regard to a child residing in a facility licensed pursuant to K.S.A. 1978 Supp. 65-501 et seq., the Secretary of Social and Rehabilitation Services may disclose the contents of such records and reports of child abuse and neglect to the Secretary of Health and Environment.

* * *

Dear Mr. Hamm:

You request our opinion as to whether the contents of reports and records obtained by the Department of Social and Rehabilitation Services pursuant to the Kansas Child Protection Act (K.S.A. 1978 Supp. 38-716 et seq.) may be "shared" by the Secretary of Social and Rehabilitation Services with the Secretary of Health and Environment. You state that this question arises because it frequently occurs that a report of suspected child abuse and neglect alleges that the abuse or neglect occurred at a facility licensed by the Department of Health and Environment pursuant to K.S.A. 65-501.

Mr. Charles V. Hamm
Page Two
May 2, 1979

K.S.A. 1978 Supp. 38-723, relating to confidentiality of records and reports filed pursuant to the Kansas Child Protection Act, provides, in part, as follows:

"All records and reports concerning child abuse and neglect filed with the department of social and rehabilitation services or a district court are confidential and shall not be disclosed, and it shall be a violation of the Kansas child protection act for any person, association, firm, corporation or other agency willfully or knowingly to permit or encourage the unauthorized dissemination of the contents of such records and reports except as otherwise provided by the Kansas child protection act or under the following conditions: (a) Upon the order of any court of record . . . ; and (b) the secretary of social and rehabilitation services or the judge of the court where the report is filed may authorize access to such records and reports to: . . . (2) an agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record;" (Emphasis added.)

We cannot agree with your suggestion that the Department of Health and Environment is "an agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record," and that the subject disclosure is therefore authorized by K.S.A. 1978 Supp. 38-723(b)(2), as set forth above. Although the Secretary of Health and Environment is charged with the duty of licensing children's boarding homes (K.S.A. 1978 Supp. 65-501 et seq.), and under certain circumstances may agree to pay a portion of the costs of care and treatment of certain crippled children (K.S.A. 1978 Supp. 65-5a13), we have been unable to find any authority to support the contention that said department is legally responsible for care, treatment or supervision of any child.

Mr. Charles V. Hamm
Page Three
May 2, 1979

Likewise, we do not agree with the suggestion that K.S.A. 1978 Supp. 65-504 mandates that the Secretary of Social and Rehabilitation Services disclose the contents of reports concerning child abuse to the Secretary of Health and Environment. The subject statutes (K.S.A. 1978 Supp. 65-504 and K.S.A. 1978 Supp. 38-716 et seq.) are not in pari materia, and no such implication is apparent or even possible, since K.S.A. 1978 Supp. 38-723 clearly requires confidentiality "except as otherwise provided by the Kansas child protection act or under the following conditions." (Emphasis added.)

We believe, however, that the subject disclosure is authorized by the following provisions of K.S.A. 1978 Supp. 38-721:

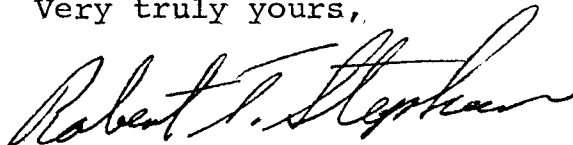
"The department [of social and rehabilitation services] shall promptly initiate an investigation of the report to determine its accuracy and whether reasonable grounds for suspicion of abuse or neglect exist. If reasonable grounds to believe abuse or neglect exist, immediate steps shall be taken to protect the health and welfare of the abused or neglected child as well as that of any other child under the same care who may be in danger of abuse or neglect." (Emphasis added.)

It is our opinion that the above underscored portion of K.S.A. 1978 Supp. 38-721 is, under the limited circumstances present here, an exception "otherwise provided" to the confidentiality requirement of K.S.A. 1978 Supp. 38-723, and that the Secretary of Social and Rehabilitation Services may, after an investigation and finding of reasonable grounds to believe abuse or neglect exists, disclose to the Secretary of Health and Environment the contents of records and reports of such abuse or neglect occurring at a facility licensed by the Department of Health and Environment. In our judgment, such disclosure would constitute an "immediate step" necessary to protect other children "under the same care" as the abused or neglected child, where such protection might best be provided by license revocation and closure of such facility. To accomplish this, the Secretary of Health and Environment would require information from such records and reports in order to lawfully (pursuant to K.S.A. 1978 Supp. 65-504) revoke the license of a residential center

Mr. Charles V. Hamm
Page Four
May 2, 1979

for children (see K.A.R. 28-4-75) or a group boarding home for children (see K.A.R. 28-4-250) where child abuse was occurring. Such information would be necessary to accomplish the license revocation pursuant to the requirement of K.S.A. 1978 Supp. 65-504 that the revocation order "clearly state the reason for such revocation." The Secretary of Health and Environment would be unable to state any reason for the revocation without inspecting the records and reports of child abuse under the control of the Department of Social and Rehabilitation Services.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:gk