



STATE OF KANSAS

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June 14, 1979

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ATTORNEY GENERAL OPINION NO. 79- 116

Dr. Thomas J. Fitzgerald
Secretary, Board of Examiners of
Psychologists
2108 West 75th Street, Suite 400
Prairie Village, Kansas 66208

Re: State Boards, Commissions, and Authorities--Board
of Examiners of Psychologists--Powers and Duties--
Violations

Synopsis: A person who engages in the practice of psychology,
as that term is defined in K.S.A. 74-5302(a), but
does not "represent himself to be a psychologist,"
as that term is defined in K.S.A. 74-5302(b), does
not violate the Certification of Psychologists Act.
Said act does not regulate the practice of psychology
except with regard to the conduct of certified
psychologists.

K.S.A. 74-5344(c), which relates to the use of "official
titles" by government employees, does not violate the
Fourteenth Amendment to the United States Constitution.

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Dear Dr. Fitzgerald:

In your letter of March 22, 1979, you request our opinion as
to numerous questions which have arisen relating to the
Certification of Psychologists Act of the State of Kansas,
K.S.A. 74-5301, et seq. Pursuant to your request for a timely

Dr. Thomas J. Fitzgerald
Page Two
June 14, 1979

response as to certain questions, and in order to accomodate a study by an interim legislative committee, we will address only those questions numbered 1, 4, and 5 in this opinion. We will address the remaining questions set forth in your letter in a later opinion.

Your first question relates to violations of the act. As I interpret your question, you are asking whether a person who engages in the "practice of psychology," as that term is defined in K.S.A. 74-5302(a), but does not "represent himself to be a psychologist," as that term is defined in K.S.A. 74-5302(b), violates the Certification of Psychologists Act. The pertinent statute, K.S.A. 74-5340, provides that it is a violation of the act for any person, not holding a valid, existing certificate as a psychologist issued by the board, "to represent himself to be a psychologist as defined in section 2 [74-5302]." There is no provision which makes it a violation of the act for a person, not a certified psychologist, to engage in the practice of psychology where there are no representations to the public of the nature set forth in K.S.A. 74-5302(b). In fact, subsection (f) of K.S.A. 74-5344 specifically authorizes the use of psychological techniques by anyone so long as the prohibited representations are not made. Accordingly, it is our opinion that there is no violation of the act under the circumstances you describe.

In connection with your first question, you ask why a definition of "practice of psychology" was included in K.S.A. 74-5302(a) if the act cannot be construed to prohibit the practice of psychology by persons other than certified psychologists. In our judgment, the definition of said term is only of consequence under the act where the certificate of a certified psychologist is suspended or revoked by the Board of Examiners of Psychologists. K.S.A. 74-5333 provides that a "certified psychologist shall not engage in practice after a certificate is revoked or during the time for which it is suspended." The definition of "practice of psychology" in K.S.A. 74-5302(a) was apparently aimed at specifying those acts which a certified psychologist may not engage in during a period of suspension or revocation.

Your second question relates to K.S.A. 74-5344(a), which allows "qualified members of other professional groups" to do "work of a psychological nature" so long as "[t]hey do not hold themselves out to the public by any title or description of services

Dr. Thomas J. Fitzgerald
Page Three
June 14, 1979

incorporating the words 'psychologic,' 'psychologist,' or 'psychology.'" As we understand your question, you are asking how the very general and undefined terms in said statute are to be applied in regulating the practice of psychology by persons other than certified psychologists. It is our belief that, in answering your first question, we also have answered this one. As stated above, the act does not proscribe or regulate the practice of psychology except with regard to the conduct of certified psychologists. In our judgment, the generality of K.S.A. 74-5344(a) reinforces our understanding that the act was not intended to reach the conduct of individuals other than those who have sought and obtained licenses as certified psychologists, except to the extent that such non-certified persons "represent" or "hold themselves out to the public" in violation of K.S.A. 74-5340.

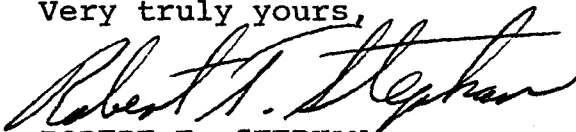
Finally, you request our opinion as to the constitutionality of K.S.A. 74-5344(c), whereby it is provided that the act shall not be construed to limit, among other acts, the use of "official titles" by persons employed by government agencies. As we construe this provision, it would authorize a government employee with the official title of "Psychologist" to use said title when dealing with the public in his official capacity, regardless of whether or not said government employee was a certified psychologist. You suggest that this creates a "double standard" and imposes undue restrictions on persons not employed by government agencies. You imply that it is your opinion that this provision constitutes a denial of equal protection of the laws and violates the Fourteenth Amendment to the United States Constitution. For the reasons discussed below, we cannot agree with this conclusion.

It is within the police power of a state to establish regulations applicable to a particular trade or business and to create statutory classifications relative thereto, so long as said classifications have a reasonable basis and are non-arbitrary. 16 Am Jur. 2d Constitutional Law § 517. In our judgment, the classification of government employees under the act is neither arbitrary or without a reasonable basis. Government employees do not, in their official capacity, render or offer to render services for a fee, and therefore do not represent themselves to be psychologists under the act. See K.S.A. 74-5302(b). They are granted no privilege not given to any other citizen, since it is clearly not a violation of the act to use the title "Psychologist" where there is no offer to render

Dr. Thomas J. Fitzgerald
Page Four
June 14, 1979

services for a fee. The failure to prohibit the use of such titles where services are rendered gratuitously apparently indicates a legislative determination that the public requires less protection where services are not rendered for a fee. While we may disagree with this determination, it is not, in our judgment, so arbitrary and unreasonable as to violate the Fourteenth Amendment to the United States Constitution.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm