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August 27, 1979

ATTORNEY GENERAL OPINION NO. 79-192

Martin R. Ufford
Boyer, Donaldson & Stewart
1030 First National Bank Building
Wichita, Kansas 67202

Re: Infants -- Crimes Affecting Children -- Reporting
Physical or Mental Abuse or Neglect of Children.

Synopsis: The provisions of Wichita Municipal Code §§5.30.010 et seq. which require hospital personnel to report treatment of emergency cases to the police department are not in conflict with or preempted by the Kansas Child Protection Act as established in K.S.A. 1978 Supp. 38-716 et seq.

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Dear Mr. Ufford:

As legal counsel for the Board of Trustees of the E. B. Allen Memorial Hospital, you have requested our opinion regarding the validity of Wichita Municipal Code §§5.30.010 et seq. which require hospital personnel to notify the police department when they treat emergency cases. You inquire if this municipal ordinance is valid in light of K.S.A. 1978 Supp. 38-716 et seq. which require enumerated persons, including hospital personnel, to report suspected child abuse or neglect to the state department of social and rehabilitation services or the district court. Additionally, you question the scope of the definition of "emergency case" as set out in the city code.

Having discussed the term "emergency case" with attorneys in both the Wichita City Attorney's Office and the Sedgwick County District Attorney's

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Office we are informed by these offices that for the purposes of the reporting ordinance, the term encompasses only incidents of physical abuse and gross neglect. It is with this interpretation in mind that we approach the question of the ordinance's validity.

The pertinent portions of the Wichita Municipal Code are as follows:

"5.30.010 Defined. For the purpose of the following section, the term 'emergency case' is defined to be any case in which bodily injury is caused to any person by means of force and violence or by any unlawful act or by accident; provided, that industrial accidents are hereby specifically excepted. (Ord. No. 10-422, §1.)

"5.30.020 Report required; information to be shown. Every physician who answers a call on an emergency case or who attends or administers to any patient that falls within the term of an emergency case as defined in the preceding section, and every hospital, hospital attendant or persons in charge thereof, who shall receive in their care, any patient in any emergency case shall immediately notify the police department of such case, giving the name and location of the patient and the nature of the injury. (Ord. No. 10-422, §2.)

"5.30.030 Penalty for violation. Every person who is convicted of violating any of the provisions of this chapter shall be guilty of a misdemeanor. (Ord. No. 32-924.)"

K.S.A. 1978 Supp. 38-717 provides:

"Every person licensed to practice the healing arts or dentistry, persons licensed to practice optometry, persons engaged in postgraduate training programs approved by the state board of healing arts, certified psychologists, Christian Science practitioners, licensed social workers, every licensed professional nurse or licensed practical nurse, examining, attending or treating a child under the age eighteen (18), every teacher, school administrator or other employee of a school which such child is attending, the chief administrative officer of a medical care facility, every person licensed by the secretary of health and environment to provide child care services or employee of the person so licensed at the place where the child care services are being provided to the child, or any law

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enforcement officer having reason to suspect that a child has had injury or injuries inflicted upon him or her as a result of physical or mental abuse or neglect, shall report, and all other persons who have reason to suspect that a child has had injury or injuries inflicted upon him or her as a result of physical or mental abuse or neglect may report, the matter promptly to the district court of the county in which such examination or attendance is made, treatment is given, school is located or such abuse or neglect is extant or to the department of social and rehabilitation services. Such report may be made orally by telephone or otherwise and shall be followed by a written report if requested. When medical examination or treatment with respect to a child is pursuant to the performance of services by a member of the staff of a medical care facility or similar institution, such staff member shall immediately notify the superintendent, manager, or other person in charge of the institution who shall make such a report in writing forthwith. Every such report when required to be written shall contain, if known, the names and addresses of the child and his or parents or other persons responsible for his or her care, the child's age, the nature and extent of the child's injuries (including any evidence of previous injuries), and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons allegedly responsible therefor."

In assessing the validity of the ordinance as it pertains to reporting child abuse and gross neglect, we must consider first whether the language of the ordinance conflicts with the state legislation, and secondly, whether the state has occupied the field of the subject matter, thus preempting municipalities from adopting legislation on the subject matter.

It is our opinion that the ordinance as adopted does not conflict with the state legislation. The Supreme Court of Kansas has addressed the issue of conflict between local and state legislation and has stated:

"A test frequently used to determine whether conflict in terms exists is whether the ordinance permits or licenses that which the statute forbids or prohibits that which the statute authorizes; if so, there is conflict, but where

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both an ordinance and the statute are prohibitory and the only difference is that the ordinance goes further in its prohibition but not counter to the prohibition in the statute, and the city does not attempt to authorize by the ordinance that which the legislature has forbidden, or forbid that which the legislature has expressly authorized, there is no conflict." City of Junction City v. Lee, 216 Kan. 495, 501 (1975).

Both the municipal ordinance and state statute in question impose a duty on enumerated individuals to formally report selected incidents to named governmental bodies. Although the municipal ordinance mandates reporting selected incidents to the police department which are also required to be reported to the department of social and rehabilitation services or district court by state statute, it is our opinion that there is no conflict in terms. The ordinance neither attempts to eliminate a duty which the legislature has imposed nor attempts to impose a duty which the legislature has expressly forbidden. Thus, the ordinance is not invalid due to a conflict with state legislation.

The second issue we must consider is whether the state has occupied the field in the area of child abuse reporting, thereby preempting municipalities from further regulating the area. The question of preemption in the area of licensing and regulation of private clubs has been considered by the Supreme Court of Kansas resulting in the following rule:

"The general rule on preemption is that legislative intent to reserve to the state exclusive jurisdiction to regulate an area must be clearly manifested by statute before it can be held that the state has withdrawn from the cities the power to regulate in the field." Garten Enterprises, Inc. v. City of Kansas City, 219 Kan. 620, 623 (1976).

It is our opinion that the Kansas Child Protection Act as set out in K.S.A. 38-716 et seq. does not manifest an intent on the part of the Kansas Legislature to reserve exclusive control in the area of reporting child abuse or neglect. Rather, we believe that the statutory scheme was enacted to insure a statewide, available vehicle to process such reports and facilitate investigations, as expressed in K.S.A. 1978 Supp. 38-716. As mentioned previously, the municipal ordinances in question in no way attempt to restrict the process established by state statutes, but rather, tend to complement and supplement it.

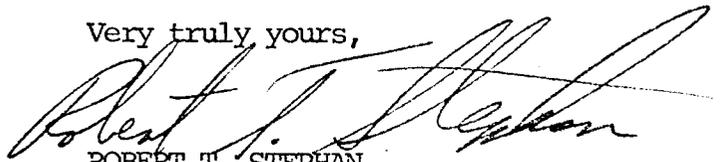
A collateral issue you have raised concerns the immunity afforded reporting parties by K.S.A. 1978 Supp. 38-718 and your concern that

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the reporting party may forfeit this immunity by complying with the reporting requirements of the Wichita Municipal Code. Although we agree that the statutory immunity provided in K.S.A. 1978 Supp. 38-718 does not extend to reports which are made to the police department (see Attorney General Opinion No. 77-68), we also recognize the distinction in the reporting requirements. K.S.A. 1978 Supp. 38-717 mandates reporting whenever the party "has reason to suspect that a child has had injury or injuries inflicted upon him or her as a result of physical or mental abuse or neglect," whereas Wichita Municipal Code §5.30.020 requires reporting only when treatment is rendered for bodily injury resulting from force, violence or unlawful act. Additionally, the Wichita Municipal Code requires only that the reporting party provide minimal information regarding the name and location of the patient and the nature of the injury. It is our opinion that the amount of information required and the difficulty of diagnosis is clearly greater in the former than it is in the latter; thus, the rationale for the explicit, statutory immunity. In actuality, we do not believe that the municipal ordinance, which mandates reporting in limited situations only, seriously exposes the reporting party to civil liability.

An analogous situation exists when comparing the reporting requirements set out in K.S.A. 21-4213 and K.S.A. 1978 Supp. 38-717. Hospital personnel who are required to report treatment of gunshot wounds and life-threatening puncture wounds pursuant to K.S.A. 21-4213 are not exempted from this duty merely because the treatment involves a child under the age of eighteen (18) years, thus requiring compliance with K.S.A. 1978 Supp. 38-717. In such cases there exists a dual reporting requirement with statutory immunity afforded in the one instance and not in the other. The absence of a statutory immunity does not invalidate the duty imposed by law.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



James E. Flory
Assistant Attorney General

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