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August 28, 1979

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ATTORNEY GENERAL OPINION NO. 79- 194

Mr. Peter E. Rinn
Director, Fraud and Recoupment Section
Kansas Department of Social and
Rehabilitation Services
State Office Building
Topeka, Kansas

Re: Department of Social and Rehabilitation Services--
Investigations--Subpoena Power of Secretary of
Social and Rehabilitation Services

Synopsis: In conducting investigations pursuant to K.S.A.
75-3306, the subpoena power of the Secretary of
Social and Rehabilitation Services extends to any
person possessing information which is relevant
and material to the inquiry, and is not confined
to those persons who are under investigation.
However, the above-cited statute grants only the
power to subpoena witnesses, and does not authorize
the issuance of subpoenas duces tecum.

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Dear Mr. Rinn:

You have requested our opinion relative to the following two
questions:

1. May the Secretary of Social and Rehabilitation
Services issue an administrative subpoena to a
person in the course of an investigation, even
though such person is not under investigation?

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2. May the Secretary of Social and Rehabilitation Services issue a subpoena duces tecum requiring the production of business records, materials, and other papers during the course of an investigation?

K.S.A. 75-3306 enumerates the investigative and subpoena powers of the Secretary of Social and Rehabilitation Services and provides, in part, as follows:

"The secretary of social and rehabilitation services shall have authority to investigate any claims and vouchers and persons or businesses who provide services to the secretary of social and rehabilitation services or to welfare recipients and the eligibility of persons to receive assistance or of providers of services. The secretary of social and rehabilitation services shall have authority, when hearing appeals or conducting investigations as provided for in this section, to subpoena witnesses, administer oaths, take testimony, and render decisions"

Answering your first question, K.S.A. 75-3306 must be construed as granting power to issue subpoenas to any person possessing information which is relevant and material to the investigation being conducted, and such subpoena power is not limited to those persons who are under investigation. Numerous cases support such a construction of similar statutes granting subpoena powers to administrative agencies. Pope & Talbot, Inc. v. Smith, 340 P.2d 960, 965 (1959); Federal Communications Commission v. Cohn, 154 F.Supp. 899, 906 (1957); Freeman v. Fidelity-Philadelphia Trust Company, 248 F.Supp. 487, 492 (1965).

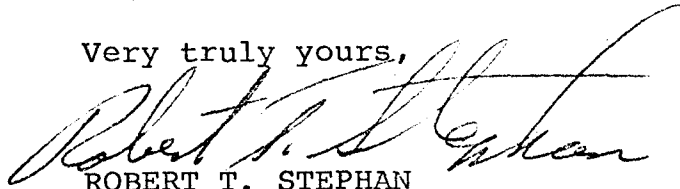
In response to the second question, it is clear that K.S.A. 75-3306 grants only the power to subpoena witnesses, and does not authorize the issuance of subpoenas duces tecum by the Secretary of Social and Rehabilitation Services. The power to subpoena witnesses does not, in the absence of other statutory provisions, include the power to require the production of records. Donatelli Building Co. v. Cranston Loan Company, 140 A.2d 705 (1958). Further, it has been held that "the power to issue subpoenas duces tecum does not inhere in administrative agencies

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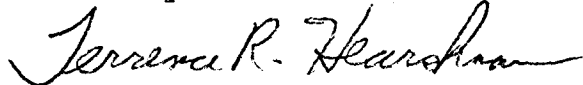
or committees and can be exercised by such committees only when expressly authorized by statute." (Emphasis added.) Id. at 707. In accordance with this authority, it is our opinion that K.S.A. 75-3306 cannot be construed to authorize the issuance of subpoenas duces tecum by the Secretary of Social and Rehabilitation Services because such statute does not expressly grant such power.

In passing, we note that the legislature has enacted numerous statutes expressly authorizing certain administrative agencies and public officials to issue subpoenas to compel the production of records and documents: K.S.A. 1978 Supp. 44-1004(5) (Civil Rights Commission); K.S.A. 74-3902 (Board of Abstracters); K.S.A. 1978 Supp. 75-2929d(c) (Civil Service Commission); K.S.A. 74-1707 (Board of Embalming); K.S.A. 22-3720 (Kansas Adult Authority); K.S.A. 79-3233 and 79-3419 (Director of Taxation); K.S.A. 74-1106(d) (Nursing Board); K.S.A. 74-1504(g) (Optometry Board); K.S.A. 74-5309(b) (Board of Psychologists); K.S.A. 58-3016(c) (Real Estate Commission); K.S.A. 17-1265(b) (Securities Commission); and K.S.A. 74-2437a (Board of Tax Appeals). Action by the legislature is necessary, however, if the Secretary of Social and Rehabilitation Services is to be granted such subpoena powers in investigations under K.S.A. 75-3306.

Very truly yours,



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RTS:BJS:TRH:jm