



STATE OF KANSAS

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December 7, 1979

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ATTORNEY GENERAL OPINION NO. 79- 278

Mr. Joseph F. Harkins
Secretary
Kansas Department of Health and
Environment
Forbes Field
Topeka, Kansas

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 an unlicensed home for children (which home would be operating in violation of K.S.A. 1978 Supp. 65-501), 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.

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Dear Mr. Harkins:

You request our opinion as to whether the Secretary of Social and Rehabilitation Services may disclose to the Secretary of Health and Environment the contents of records and reports of child abuse occurring at an unlicensed home for children. You also inquire whether the Secretary of Social and Rehabilitation Services may disclose such records and reports to the Secretary of Health and Environment prior to an investigation by the Department of Social and Rehabilitation Services (S.R.S.) and a finding that there are reasonable grounds to believe that abuse or neglect exists.

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In Attorney General Opinion No. 79-76, we concluded as follows:

"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." (Emphasis added.)

Where the reports of child abuse and neglect relate to an unlicensed home for children, which home would be operating in violation of K.S.A. 1978 Supp. 65-501, it is likewise our opinion that the Secretary of Social and Rehabilitation Services may disclose the contents of such records and reports to the Secretary of Health and Environment, under the circumstances set forth in the prior opinion. The need for disclosure in such a situation is even greater than where the reports relate to a licensed home, since an unlicensed home should be closed regardless of whether child abuse or neglect is present therein.

However, as was noted in our prior opinion, the disclosure of records and reports of child abuse and neglect by S.R.S. is restricted by the specific provision of K.S.A. 1978 Supp. 38-721. That statute provides, in part, as follows:

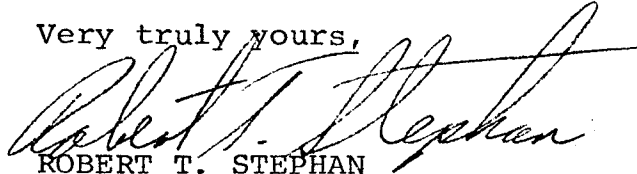
"The department shall promptly initiate an investigation of the report to determine its accuracy and whether reasonable grounds for suspicion of abuse or neglect exist. If reasonable grounds to believe abuse or neglect exist, immediate steps shall be taken to protect the health and welfare of the abused 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.)

As the underscored portion of the statute indicates, S.R.S. may take "immediate steps," including, as we concluded in Attorney General Opinion No. 79-76, "sharing" of records

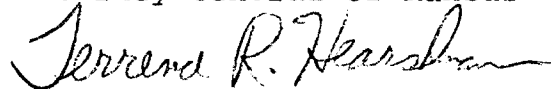
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and reports of child abuse with the Department of Health and Environment, only after an investigation and finding of reasonable grounds to believe abuse or neglect exists. If no such investigation or finding has been made, the records and reports concerning child abuse in the possession of S.R.S. must remain confidential, in accordance with the provisions of K.S.A. 1978 Supp. 38-723.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm