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December 1, 1980

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ATTORNEY GENERAL OPINION NO. 80- 253

Mr. William R. Kauffman
Staff Attorney
State Board of Regents
Suite 1416, Merchants Bank Tower
Topeka, Kansas 66612

Re: State Boards, Commissions and Authorities--Behavioral Sciences Regulatory Board--Practice of Counseling, Family Life Consultation and Education Not Unlawful Practice of Psychology or Social Work

Synopsis: Marriage and family counselors/therapists, vocational counselors, family life educators, family life consultants, early childhood educators, sex educators/counselors and guidance counselors are professionals within the meaning of K.S.A. 74-5344(a), as amended by L. 1980, ch. 242, §28(a). Persons who are "qualified members" of such professional groups who perform work of a psychological nature consistent with their training and their professional code of ethics, and who do not hold themselves out to the public by any title or description of services incorporating the word "psychologic," "psychological," "psychologist," or "psychology," are exempt from regulation and from any penalties prescribed under the Certification of Psychologists Act. Such persons are also members of other "professions and callings," as that phrase is used in K.S.A. 75-5348(b), as amended by L. 1980, ch. 242, §16(b), and are exempt from regulation and the penalties prescribed by that section, so long as they do not hold themselves out to the public by any title or description of services as being engaged in the practice of social work.

Students who are paid for clinical work of a psychological nature in connection with their educational pursuits in counseling or family life education or in the other professions

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listed above are exempt from regulation by reason of K.S.A. 74-5344(c), as amended by L. 1980, ch. 242, §28(c). Such students engaged in work of a psychological nature who do not receive a salary or any compensation therefor are not subject to the penalties prescribed by the Certification of Psychologists Act, since they are not engaged in practice for a fee. Students in such programs may be characterized as "qualified persons" of the various "professions or callings" referred to in K.S.A. 75-5348(b), as amended by L. 1980, ch. 242, §16(b), as may be determined by the respective professions or callings, thus exempting them from prosecution for violation of K.S.A. 75-5348(a), as amended by L. 1980, ch. 242, §16(a). Cited herein: K.S.A. 74-5301, 74-5302, as amended by L. 1980, ch. 242, §11, 74-5340, 74-5344, as amended by L. 1980, ch. 242, §28, 75-5347, as amended by L. 1980, ch. 242, §15, 75-5348, as amended by L. 1980, ch. 242, §16, 77-201, Second.

* * *

Dear Mr. Kauffman:

On behalf of the Board of Regents, you have requested the opinion of this office on several questions raised by members of the College of Home Economics and the Department of Family and Child Development of Kansas State University. Their concerns, as set forth in a letter submitted to you by university attorney Richard Seaton, pertain to changes in the Certification of Psychologists Act and statutes governing the practice of social work by enactment of L. 1980, ch. 242, which act established the behavioral sciences regulatory board to regulate the practice of psychology and the practice of social work in Kansas. Specifically, there are two inquiries:

1. Whether Kansas law makes unlawful professional practice by the professions of marriage and family counselors/therapists, vocational counselors, family life educators, family life consultants, early childhood educators, sex educators/counselors and guidance counselors so long as the practitioners operate within the code of ethics of their respective professions and refrain from calling themselves psychologists or social workers and do not describe their services as the practice of psychology or the practice of social work.
2. Whether clinical practice by students in university internships or training programs for the above-named professions is unlawful

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where such students provide counseling and therapy services but do not hold themselves out to be psychologists or social workers and do not receive fees for such services, but who may or may not be on the university payroll in connection with such internships or training programs.

In their letter, the faculty members express concern that the above-described practice by students and graduates would be deemed unlawful because such counseling practice apparently fits within the definitions of the practice of psychology and the practice of social work. We note that under K.S.A. 74-5302, as amended by L. 1980, ch. 242, §11(a), the definition of the "practice of psychology" includes within its meaning "counseling . . . in the areas of work, family, school and personal relationships." Likewise, in K.S.A. 75-5347, as amended by L. 1980, ch. 242, §15(b), the definition of the practice of social work includes within its meaning "psychotherapy," which term is further defined as including "individual psychotherapy, conjoint marital therapy, family therapy and group psychotherapy." (Emphasis added.) See L. 1980, ch. 242, §15(c).

Moreover, as the faculty members have correctly noted, the above-mentioned 1980 law makes a significant change in the Certification of Psychologists Act, K.S.A. 74-5301 et seq., specifically in the language of K.S.A. 74-5302, as amended by L. 1980, ch. 242, §11(b), as follows:

"The term 'represents himself to be a psychologist' means that a person engages in the practice of psychology for a fee, monetary or otherwise, or holds himself out to the public by any title or description of services incorporating the word 'psychologic,' ' psychological,' 'psychologist,' or 'psychology,' and under such title or description offers to render or renders services to individuals, corporations, or the public for a fee, monetary or otherwise." (Emphasis added.)

K.S.A. 74-5302 was changed by the addition of the above-emphasized language. As we noted in Attorney General Opinion No. 80-220:

"Before this change was made, the Certification Act was merely a 'title act,' making unlawful only those representations to the public 'by any title or description of services incorporating the word "psychologic," "psychological" . . . (etc.)' under which a person offers to render or renders

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services for a fee. Now, by virtue of this amendment, an unlawful representation under 74-5340 also includes engaging in the 'practice' of psychology, as defined by the act, without a certificate." (Emphasis in original.)

K.S.A. 75-5348, as amended by L. 1980, ch. 242, §16(a), provides for a similar proscription against the practice of social work without a license.

In answer to the first question, it is important to note that K.S.A. 74-5344, as amended by L. 1980, ch. 242, §28, exempts some professions and practices from regulation under the Certification of Psychologists Act. That section provides, in pertinent part, thus:

"Nothing contained in this act shall be construed: (a) To prevent qualified members of other professional groups such as, but not limited to, ministers, Christian Science practitioners, social workers, and sociologists from doing work of a psychological nature consistent with their training and consistent with any code of ethics of their respective professions so long as they do not hold themselves out to the public by any title or description of services incorporating the words 'psychologic,' 'psychological,' 'psychologist,' or 'psychology';

. . . .

"(c) to limit the practice of psychology or use of official title on the part of a person in the employ of a federal, state, county or municipal agency, or other political subdivision, or a duly chartered educational institution, or a not for profit corporation insofar as such practice is a part of the duties of such person's salaried position, and insofar as such practice is performed solely on behalf of such person's employer. . . ." (Emphasis added.)

Subsection (a) states the criteria for exemption of members of professions doing work of a psychological nature from regulation under the Certification of Psychologists Act. Several examples of "professional groups" are cited, but the statutory exemption is not limited to these, by its express terms.

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Similarly, the statutes pertaining to social work practice provide for an exemption of other professional groups from regulation under such statutes so long as no unlawful representations are made. K.S.A. 75-5348, as amended by L. 1980, ch. 242, §16(b), provides:

"Nothing in this act shall be construed to prevent qualified persons from doing work within the standards and ethics of their respective professions and callings provided they do not hold themselves out to the public by any title or description of services as being engaged in the practice of social work." (Emphasis added.)

The language of these exemption statutes is troublesome. The exemptions are broad and rather open-ended, extending to any "qualified members" of "other professional groups" (in the statutes pertaining to the practice of psychology) and to any "qualified persons" of other "professions and callings" (in the statutes pertaining to the practice of social work). The legislature has not chosen to define or to narrow the scope of exemption of the "other professional groups" or "professions and callings" to which it refers. Whether a particular profession or group fits within the above-described exemptions is a determination to be made according to the rule of K.S.A. 77-201, Second, that "[w]ords and phrases shall be construed according to the context and the approved usage of the language."

According to Webster's Dictionary, a "profession" is

"a calling requiring specialized knowledge and often long and intensive preparation including instruction in skills and methods as well as in the scientific, historical or scholarly principles underlying such skills or methods, maintaining by force of organization or concerted opinion high standards of achievement and conduct, and committing its members to continued study and to a kind of work which has for its prime purpose the rendering of a public service."
Webster's Third New International Dictionary (Unabridged, 1968), p. 1811. (See also, Black's Law Dictionary, Revised Fourth Edition, p. 1375.)

Accordingly, if the members of the groups about which you have inquired may be characterized as "qualified members" of "professional groups" within the meaning of the exemption in the Certification Act and the above-quoted definition, and those persons do work of a

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psychological nature consistent with their training and their professions' codes of ethics, their practice is not conduct in violation of the Certification of Psychologists Act, so long as they do not hold themselves out to the public by any title or description of services incorporating the words "psychologic," "psychological," "psychologist," or "psychology." Likewise, if such persons may be characterized as "qualified persons" of other "professions and callings" within the meaning of the exemption in K.S.A. 75-5348(b), as amended by L. 1980, ch. 242, §16(b), and they make no representations that they are engaged in social work practice, their practice is not conduct in violation of the statute pertaining to the practice of social work. In our opinion, the groups about which you have inquired are "professional groups" or other "professions and callings" within the meaning of the definition of "profession" and the above-discussed exemptions.

Secondly, in response to the inquiry about practice by students who receive a salary or compensation for their counseling and therapy work in university programs for the above-listed professions, we note that subsection (c) of K.S.A. 74-5344, as amended by L. 1980, ch. 242, §28(c) (quoted above), exempts from regulation under the Certification of Psychologists Act those persons practicing psychology in the employ of a duly chartered educational institution. The practice must be a part of that person's duties, and must be done on behalf of the employer institution. Thus, students who are paid by a state educational institution for clinical work of a psychological nature in connection with their educational pursuits in counseling or family life education or the other groups or professions listed above are, in our opinion, exempt from regulation under K.S.A. 74-5344(c), as amended. Further, students engaged in work of a psychological nature who do not receive any salary or compensation therefor are not subject to the penalties prescribed under the Certification of Psychologists Act since they are not engaged in practice for a fee.

There is no similar section in the statutes regulating the practice of social work specifically exempting practice by students. Arguably, however, students may be characterized as "qualified persons" of the various "professions or callings" about which you have inquired, as may be determined by the respective professions or callings within the meaning of K.S.A. 75-5348(b), as amended by L. 1980, ch. 242, §16(b), thus exempting them from prosecution for violation of K.S.A. 75-5348(a), as amended by L. 1980, ch. 242, §16(a).

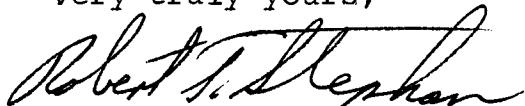
In summary, we conclude that marriage and family counselors/therapists, vocational counselors, family life educators, family life consultants, early childhood educators, sex educators/counselors and guidance

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counselors are professionals within the meaning of the language of K.S.A. 74-5344(a), as amended by L. 1980, ch. 242, §28(a). Persons who are "qualified members" of such professional groups who perform work of a psychological nature consistent with their training and their professional group's code of ethics, and who do not hold themselves out to the public by any title or description of services incorporating the word "psychologic," "psychological," "psychologist," or "psychology," are exempt from regulation and from any penalties prescribed under the Certification of Psychologists Act. Such persons are also members of other "professions and callings," as that phrase is used in K.S.A. 75-5348(b), as amended by L. 1980, ch. 242, §16(b), and are exempt from regulation and the penalties prescribed by that section, so long as they do not hold themselves out to the public by any title or description of services as being engaged in the practice of social work.

Students who are paid for clinical work of a psychological nature in connection with their educational pursuits in counseling or family life education or in the other professions listed above are exempt from regulation by reason of K.S.A. 74-5344(c), as amended by L. 1980, ch. 242, §28(c). Such students engaged in work of a psychological nature who do not receive a salary or any compensation therefor are not subject to the penalties prescribed by the Certification of Psychologists Act, since they are not engaged in practice for a fee. Students in such programs may be characterized as "qualified persons" of the various "professions or callings" referred to in K.S.A. 75-5348(b), as amended by L. 1980, ch. 242, §16(b), as may be determined by the respective professions or callings, thus exempting them from prosecution for violation of K.S.A. 75-5348(a), as amended by L. 1980, ch. 242, §16(a).

Very truly yours,



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Steven Carr
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