



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83-68

Brenda West Hagerman
Pawnee County Attorney
Pawnee County Courthouse
Larned, Kansas 67550

Re: Counties and County Officers -- Jails -- Ministers
to Have Access to Jail; "Minister" Defined.

Synopsis: A sheriff may refuse access to the jail to a person claiming to be a minister if, after inquiry of the person's professional status, the sheriff is convinced that the person does not qualify as a "minister" within the meaning of K.S.A. 19-1906. The sheriff may consider the credentials of ordination, any acknowledgment of a sect that such person is a minister and the extent to which the person is practicing the ministry as a vocation. Cited herein: K.S.A. 19-1903, 19-1906, 60-429, 50 U.S.C. App. 451 et seq., 32 C.F.R. §§ 1645.1 and 1645.6.

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Dear Ms. Hagerman:

You have requested our interpretation of the term "minister" as used in K.S.A. 19-1906. More specifically you ask what qualifications a person must have to be deemed a minister for the purpose of having access to jail inmates.

K.S.A. 19-1906 states in pertinent part:

"[A]ny minister of the gospel desiring to aid in reforming the prisoners and instructing them in their moral and religious duties, shall have access to them at reasonable and proper times."

Our research has failed to locate any Kansas cases involving K.S.A. 19-1906, however, we believe that the penitential communication privilege, set forth in K.S.A. 60-429 sheds light on the meaning of the term "minister."

We further note that the provisions of this statute are identical in substance to 32 C.F.R. §1645.1 which was promulgated pursuant to 50 U.S.C. App. 451 et seq. (Selective Service Act), and relate to the granting of a military deferment for ministers.

The Selective Service Act's deferral for ministers of religion has given rise to a substantial body of case law. Bradshaw v. United States, 242 F.2d 180 (10th Cir. 1957); United States v. Hardin, 331 F.Supp. 1112 (D. Col. 1971); Kuykendall v. United States, 387 F.2d 594 (10th Cir. 1968); Fore v. United States, 395 F.2d 548 (10th Cir. 1962); Yeoman v. United States, 400 F.2d 793 (10th Cir. 1968) and Pittman v. United States, 411 F.2d 635 (10th Cir. 1969).

Since both selective service and prison regulation involve areas of public concern and the definitions of minister for federal law and K.S.A. 60-429 are substantially identical, we believe the federal selective service cases are relevant in our consideration of the meaning of the term "minister" as it is used in K.S.A. 19-1906. We preface our analysis on the premise that the legislature did not intend that any person would have access to jails in Kansas, and instead used the word "minister" to identify a limited and defined class of persons qualified for a special privilege. Hence, the mere assertion that a person is a "minister" is insufficient if in fact the person is not a "minister" within the meaning of the law.

K.S.A. 60-429 and 32 C.F.R. §1645.1 and the above-cited cases all recognize both "duly ordained ministers" and "regular ministers." However, both "duly ordained ministers" and "regular ministers" must preach and teach the principles of religion as a vocation, not merely as an avocation, in order to meet the requirements of 32 C.F.R. §1645.1 and K.S.A. 60-429. The regulation specifically defines vocation as one's regular calling or full-time profession. 32 C.F.R. §1645.1(4). The courts in selective service cases have

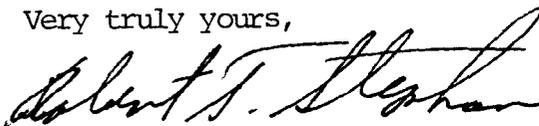
Brenda West Hagerman
Page Three

consistently held that mere statements by the purported minister with acknowledgment by his congregation are not sufficient for deferral if the claimant holds secular employment.

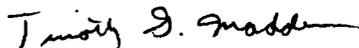
We believe that it is within the authority of the sheriff, as keeper of the jail pursuant to K.S.A. 19-1903, to inquire whether a purported minister has credentials attesting his ordination, or whether he is acknowledged by a sect as a minister. The sheriff may also determine if the person is a practicing minister as a vocation or merely as an avocation, and he may evaluate the vocational nature of the practice by determining if the individual holds secular employment in addition to his religious activities. If an individual is neither ordained according to the practices of a faith nor recognized by a sect as a minister, or where his or her religious activities do not constitute a full-time profession or vocation, a sheriff may deny access to the jail.

Therefore, in our opinion, a sheriff may refuse access to the jail to a person claiming to be a minister if, after inquiry of the person's professional status, the sheriff is convinced that the person does not qualify as a "minister" within the meaning of K.S.A. 19-1906. The sheriff may consider the credentials of ordination, any acknowledgment of a sect that such person is a minister and the extent to which the person is practicing the ministry as a vocation.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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RTS:JEF:TGM:may