



STATE OF KANSAS

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July 8, 1985

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ATTORNEY GENERAL OPINION NO. 85-78

The Honorable Dale M. Sprague  
State Representative, 73rd District  
1320 N. Walnut  
P.O. Box 119  
McPherson, Kansas 67460

Re: State Departments; Public Officers, Employees --  
Department of Social and Rehabilitation Services --  
Licensing of Social Workers; Limitations on Private  
Practice of Social Work

Synopsis: K.S.A. 75-5353 prohibits a person from engaging in the private practice of social work [as that term is defined by K.A.R. 1984 Supp. 102-2-1(b)] unless he or she is a licensed master social worker and has had two years experience. As adoption assessments under K.S.A. 59-2278(c) as amended are to be performed by a "licensed" social worker, such assessments could be made either by a social worker in private practice under K.S.A. 75-5353, or by a social worker employed by the court or another employer. If the latter situation exists, the social worker is not self-employed and does not have to meet the requirements of K.S.A. 75-5353. Cited herein: K.S.A. 59-2278, as amended by 1985 Senate Bill No. 69; 75-5347; 75-5351; 75-5353; K.A.R. 1984 Supp. 102-2-1.

\* \* \*

Dear Representative Sprague:

As State Representative for the 73rd District, which includes the City of McPherson and a portion of McPherson County, you request our opinion concerning the performance of adoption

assessments pursuant to K.S.A. 59-2278, as amended by 1985 Senate Bill No. 69. Specifically, you inquire whether the making of such assessments by a licensed social worker constitutes the private, independent practice of social work as that term is used by K.S.A. 75-5353. The latter statute prohibits such practice except by individuals who meet the qualifications imposed therein, and makes a violation a Class B misdemeanor. In that you inform us that performance and completion of adoptions in McPherson County are contingent upon our opinion, we have attempted to expedite our response.

As amended, K.S.A. 59-2278 concerns the procedure for adoption of a child in this state, and provides at subsection (c) that:

"Promptly upon the filing of the petition by a petitioner who is not a stepparent, the court shall require the petitioner to obtain an assessment by a court designated social worker licensed to practice social work in Kansas or by a licensed child-placing agency of the advisability of the adoption. The petitioner shall file with the court, not less than 10 days before the hearing on the petition, a report of the assessment and, if applicable, the information filed under section 2. If there is no licensed social worker or licensed child-placing agency available to make the social assessment and report to the court, the court may use the department of social and rehabilitation services for that purpose. The costs of making the assessment and report may be assessed as court costs in the case as provided in article 20 of chapter 60 of the Kansas Statutes Annotated and amendments thereto. In making the assessment, the social worker, child-placing agency or department of social and rehabilitation services is authorized to observe the child and to contact the agency or individuals consenting to the adoption and confirm and, if necessary, clarify any genetic and medical history filed with the petition. This information shall be made a part of the report to the court. The report to the court by the social worker, child-placing agency or department of social and rehabilitation services shall include the results of investigation of the adopting parents, their home and their ability to care for the child." (Emphasis added.)

It may be noted from the above that the assessment is to be made by a social worker "licensed to practice social work in Kansas," and that the assessment involves the social worker's observations, interviews and investigation into the various factors which the court must consider in determining the ability of the prospective parents to care for the child. Clearly, this process constitutes "social work practice" as that term is defined by K.S.A. 75-5347(b).

Under K.S.A. 75-5347 et seq., several different levels of licensed social workers are established. K.S.A. 75-5351 sets forth three classes (Baccalaureate social worker, Master social worker and Specialist social worker), each of which has different requirements. However, in that K.S.A. 59-2278(c) as amended does not distinguish between the three different groups, but instead refers generally to social workers "licensed" to practice in Kansas, in our opinion any one of the three groups is initially eligible to make such assessments. However, care must be taken to comply with the requirements of K.S.A. 75-5353, which states:

"(a) No person may engage in the private, independent practice of social work unless he or she is:

"(1) Licensed under this act as a master social worker; and

"(2) Has had two years' supervised experience as a licensed social worker in the method to be offered in private practice subsequent thereto.

"(b) Any violation of this section shall constitute a class B misdemeanor."

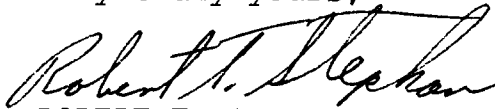
"Private, independent practice of social work" is in turn defined by K.A.R. 1984 Supp. 102-2-1(b) to mean "the provision of social work services by a social work practitioner working as a self-employed person."

From the above, it would appear that the provisions of K.S.A. 75-5353 are triggered when persons who have only a baccalaureate social worker license engage in social work practice while self-employed. Presumably, if such persons were employed by the court, by a state or local government agency or by a private corporation or individual, they would not be self-employed, and so would not be in "private, independent practice." Accordingly, the mere fact that adoption assessments are made is not

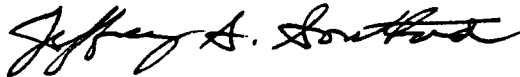
determinative of whether K.S.A. 75-5353 is applicable. Rather, the facts surrounding the individual social worker's employment should be examined to see if he or she is self-employed and so engaged in private, independent practice.

In conclusion, K.S.A. 75-5353 prohibits a person from engaging in the private practice of social work [as that term is defined by K.A.R. 1984 Supp. 102-2-1(b)] unless he or she is a licensed master social worker and has had two years experience. As adoption assessments under K.S.A. 59-2278(c) as amended are to be performed by a "licensed" social worker, such assessments could be made either by a social worker in private practice under K.S.A. 75-5353, or by a social worker employed by the court or another employer. If the latter situation exists, the social worker is not self-employed and does not have to meet the requirements of K.S.A. 75-5353.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Deputy Attorney General

RTS:JSS:crw