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July 30, 1985

ATTORNEY GENERAL OPINION NO. 85- 89

Peter E. Rinn
Chief Counsel
State Department of Social
and Rehabilitation Services
State Office Building, 6th Floor
Topeka, Kansas 66612

Re: Public Health -- Alcoholism and Intoxication
Treatment -- Treatment Facilities

Synopsis: K.S.A. 65-4012 requires that no public or private treatment facility for alcoholics shall be established or maintained without a license. A treatment facility, according to K.S.A. 1984 Supp. 65-4003d(2) and (3), includes any facility run by a private agency or governmental unit providing "for the treatment of alcoholics or intoxicated individuals or individuals incapacitated by alcohol." A treatment center operated by a hospital and located at a separate site falls into this category and must be licensed by the Secretary of Social and Rehabilitation Services as provided in K.S.A. 65-4014. Cited herein: K.S.A. 65-425; K.S.A. 1984 Supp. 65-425a; K.S.A. 65-427; 65-429; K.S.A. 1984 Supp. 65-4003d; K.S.A. 65-4012; 65-4014.

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Dear Mr. Rinn:

As chief counsel for the Kansas Department of Social and Rehabilitation Services, you request our opinion on a question concerning the licensing of satellite alcohol abuse facilities operated by hospitals. Specifically, you inquire whether the Secretary of Social and Rehabilitation Services has the

authority under K.S.A. 65-4001 et seq., to license these outpatient facilities operated outside the hospital.

Initially, we would agree with your conclusion that the Kansas Department of Health and Environment does not have the authority to license these centers. K.S.A. 65-427 requires medical care facilities to be licensed, and K.S.A. 65-429 authorizes the department to issue such licenses. According to K.S.A. 65-425(h), a "hospital" is a medical care facility. A "general hospital" is:

" . . . an establishment with an organized medical staff of physicians; with permanent facilities that include inpatient beds; and with medical services, including physician services, and continuous registered professional nursing services for not less than twenty-four (24) hours of every day, to provide diagnosis and treatment for four or more nonrelated patients who have a variety of medical conditions." K.S.A. 65-425(a).

A "special hospital," as defined in K.S.A. 65-425(b), differs from a general hospital only in that it treats patients with "specified medical conditions."

According to the information you provide, alcohol treatment centers do not meet this definition. The facilities are located outside hospital grounds, do not maintain inpatient beds and do not provide for physician and nursing care twenty-four hours a day. In our opinion, these differences are sufficient to remove such facilities from the supervision of the Department of Health and Environment.

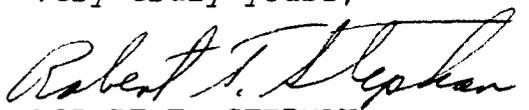
Your letter discusses another possible way to regulate these facilities, i.e. under K.S.A. 65-4001 et seq. K.S.A. 65-4012 requires that all public or private alcoholic treatment facilities operating in the state be licensed. The Secretary of Social and Rehabilitation Services has the authority to license approved facilities under K.S.A. 65-4014. A treatment facility, whether public or private, is defined as a place which provides for "treatment of alcoholic or intoxicated persons or persons incapacitated by alcohol." K.S.A. 65-4003d(2), (3). However, the definition does not include, according to K.S.A. 65-4003d(4) ". . . a licensed medical care facility." As previously noted, while this term is defined by K.S.A. 65-425 to include hospitals, both general

and special, the latter are defined in such a way that off-site clinics are not included. We note that while in one case the legislature has seen fit to enlarge the definition of "hospital" to include clinics (K.S.A. 1984 Supp. 65-425a), no such action has been taken where alcoholism treatment facilities are concerned.

As a result, it is our opinion that the centers you describe do not fall into the list of facilities exempt from the Secretary's regulation pursuant to K.S.A. 1984 Supp. 65-4003d(4). The satellite facilities are specifically designed for treatment of alcoholic individuals and do not meet the definition of either hospital or medical care facility so as to be subject to the authority of the Department of Health and Environment. Therefore, centers or clinics established and maintained for this purpose are subject to the regulation of the Secretary of Social and Rehabilitation Services as set forth in K.S.A. 65-4001 et seq.

In conclusion, K.S.A. 65-4012 requires that no public or private treatment facility for alcoholics shall be established or maintained without a license. A treatment facility, according to K.S.A. 1984 Supp. 65-4003d(2) and (3), includes any facility run by a private agency or governmental unit providing "for the treatment of alcoholics or intoxicated individuals or individuals incapacitated by alcohol." A treatment center operated by a hospital and located at a separate site falls into this category and must be licensed by the Secretary of Social and Rehabilitation Services as provided in K.S.A. 65-4014.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
Deputy Attorney General