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ATTORNEY GENERAL OPINION NO. 87- 61

The Honorable Henry Helgerson, Jr.  
Representative, Eighty-Sixth District  
State Capitol, Room 273-W  
Topeka, Kansas 66612

Re: State Boards, Commissions and Authorities --  
Coordinating Council on Early Childhood  
Developmental Services -- P.L. 99-457

Synopsis: The Governor may not designate the Coordinating Council On Early Childhood Developmental Services (Council) as the lead agency for the purposes of Public Law 99-457. The lead agency and the State Interagency Coordinating Council are two separate and distinct requirements of P.L. 99-457. Furthermore, the current structure of the Council, if designated as the State Interagency Coordinating Council, will require reorganization to remain in compliance with the requirements of P.L. 99-457. Cited herein: K.S.A. 1986 Supp. 74-7801 et seq.; P.L. 99-457.

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Dear Representative Helgerson:

As Representative for the Eighty-Sixth District, you request our opinion on Public Law 99-457. Specifically, you ask whether the Governor may designate the Coordinating Council On Early Childhood Developmental Services (Council), created by K.S.A. 1986 Supp. 74-7801 et seq., as the lead agency for the purposes of P.L. 99-457.

Section 674 of P.L. 99-457 states:

"In order to be eligible for a grant under section 673 for any fiscal year, a State shall demonstrate to the Secretary (in its application under section 678) that the State has established a State Interagency Coordinating Council which meets the requirements of section 682."

Section 682 of P.L. 99-457 states in part:

"(a) ESTABLISHMENT - (1) Any State which desires to receive financial assistance under section 673 shall establish a State Interagency Coordinating Council composed of 15 members.

"(2) The Council and the chairperson of the Council shall be appointed by the Governor. In making appointments to the Council, the governor shall ensure that the membership of the Council reasonably represents the population of the State.

"(b) COMPOSITION - The Council shall be composed of -

"(1) at least 3 parents of handicapped infants or toddlers of handicapped children aged 3 through 6, inclusive,

"(2) at least 3 public or private providers of early intervention services,

"(3) at least one representative from the State legislature,

"(4) at least one person involved in personnel preparation, and

"(5) other members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to handicapped infants and toddlers and their families and others selected by the Governor.

. . . .

"(e) FUNCTIONS OF COUNCIL - The Council shall -

"(1) advise and assist the lead agency designated or established under section 676(b)(9) in the performance of the responsibilities set out in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements,

"(2) advise and assist the lead agency in the preparation of applications and amendments thereto,

. . . .

"(g) USE OF EXISTING COUNCILS - To the extent that a State has established a Council before September 1, 1986, that is comparable to the Council described in this section, such Council shall be considered to be in compliance with section. Within 4 years after the date the State accepts funds under section 673, such State shall establish a council that complies in full with this section."  
(Emphasis added).

K.S.A. 1986 Supp. 74-7801 states in part:

"The coordinating council on early childhood developmental services shall consist of seven members as follows: The secretary of social and rehabilitation services, the secretary of administration, the secretary of health and environment, one member representative of the public at large appointed by the governor, one parent of a child with a handicapping condition appointed by the governor, a member of the state board of education selected by the chairperson of the state

board of education or, at the discretion of the chairperson of the state board, the commissioner of education, and a representative of the board of regents selected by the chairperson of the board of regents." (Emphasis added).

Section 676 of P.L. 99-457 states in part:

"(b) MINIMUM COMPONENTS - The statewide system required by subsection (a) shall include, at a minimum -

. . . .

"(9) a single line of responsibility in a lead agency designated or established by the Governor for carrying out -

"(A) the general administration, supervision, and monitoring of programs and activities receiving assistance under section 673 to ensure compliance with this part,

"(B) the identification and coordination of all available resources within the State from Federal, State, local and private sources,

"(C) the assignment of financial responsibility to the appropriate agency,

"(D) the development of procedures to ensure that services are provided to handicapped infants and toddlers and their families in a timely manner pending the resolution of any disputes among public agencies or service provides,

"(E) the resolution of intra- and interagency disputes, and

"(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures

for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination, . . . ." (Emphasis added).

Section 678(a) of P.L. 99-457 states in part:

"(a) APPLICATION - Any State desiring to receive a grant under section 673 for any year shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require by regulation. Such an application shall contain -

"(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 673 . . . ." (Emphasis added).

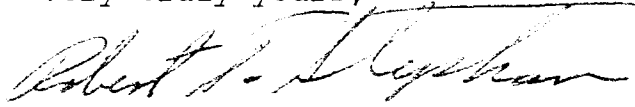
In section 682 of P.L. 99-457, subsection (e) mandates that the Council shall "advise and assist the lead agency;" subsections (a), (b) and (c) require that the Council be composed of a cross-section of citizens of the state and meet four times a year. Sections 676 and 678 of P.L. 99-457, on the other hand, discuss a "lead agency" that will actually "carry out" and "administer" the entire program. Given this, it is our opinion that the federal government intended two separate and distinct entities, a Council and a lead agency. Therefore, it is our opinion that the Governor may not designate the Council as the lead agency for the purposes of P.L. 99-457.

Furthermore, the Council as currently structured may eventually be deemed unsuitable for the purposes of P.L. 99-457; i.e. section 682 (15 members), as opposed to K.S.A. 1986 Supp. 74-7801(a) (7 members). However, section 682(g) of P.L. 99-457 does grant the state time to "comply in full" and remedy the above-mentioned and other defects of K.S.A. 1986 Supp. 74-7801 et seq.

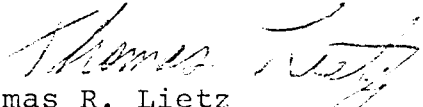
In conclusion, The Governor may not designate the Council as the lead agency for the purposes of P.L. 99-457. Furthermore, the current structure of the Council will require

reorganization to remain in compliance with the requirements of P.L. 99-457.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Thomas R. Lietz  
Assistant Attorney General

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