



STATE OF KANSAS

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September 18, 1987

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ATTORNEY GENERAL OPINION NO. 87- 138

The Honorable Ed C. Redmon
State Fire Marshall
Landon State Office Bldg.
Suite 901
900 S.W. Jackson
Topeka, KS 66612

The Honorable Phil Kline
Representative, 19th District
7505 West 93rd Street
Overland Park, KS 66212-2243

Re: State Departments; Public Officers and Employees
--Private Investigative or Security Operations --
Arson Investigation by Licensed Engineers;
Testimony by Out-of-State Arson Investigators

Synopsis: 1) Engineers and private arson investigators
consulting in cases requiring the use of their
technical knowledge are exempt from K.S.A.
75-7b01(a).

2) Persons may testify as expert witnesses in
Kansas in matters in which they are qualified, even
though they may not be licensed within that
profession by the State of Kansas. Cited herein:
K.S.A. 60-456b; 75-7b01a; 75-7b02(a).

Dear Rep. Kline and Mr. Redmon:

Each of you have asked questions regarding the applicability
of the private investigator licensure act to expert witnesses
who testify in Kansas in certain instances. Mr. Redmon asks
whether an out-of-state arson investigator may lawfully

testify in Kansas as to the origin or cause of a fire without being licensed as a private investigator. Representative Kline asks whether engineers who testify as experts must be licensed as private investigators. Since the same body of law is implicated in the answers to both requests, we have decided to answer in a single opinion.

K.S.A. 75-7b01(a) defines "detective business" as:

"the furnishing of, making of or agreeing to make any investigation for the purpose of obtaining information with reference to: Crime or wrongs done or threatened against the United States or any state or territory of the United States; the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation or character of any person; the location, disposition or recovery of lost or stolen property; the cause or responsibility for fires, libels, losses, accidents or damage or injury to persons or to property; or securing evidence to be used before any court, board, officer or investigating committee." (Emphasis added).

K.S.A. 75-7b02(a) prohibits persons from engaging in detective business in this state unless such person is licensed as a private detective.

The question you ask is one of first impression in Kansas, however, the issue has been addressed elsewhere. In Kennard v. Rosenberg, 127 Cal. App. 2d 340, 273 P.2d 839 (1954), the California appeals court ruled that the investigative license requirement for two chemical engineers and one private arson investigator hired to investigate a fire was unnecessary. In Kennard, all three men were deemed to be expert witnesses. However, their testimony was challenged because they lacked the requisite private investigator license. This license is required under the Cal. Bus. & Prof. Code 752(a), "for persons obtaining information on the cause or responsibility for fires . . . accidents or damage to property, or securing evidence to be used before any court."

This language is identical to that contained in K.S.A. 75-7b01(a).

In deciding the licensure requirement for the three men was unnecessary, the Kennard court stated:

"The uncontradicted evidence is that none of the plaintiffs herein were engaged in the private detective business or represented themselves to be so engaged. Plaintiffs Kennard and Drake were licensed engineers and as such were authorized to make investigations in connection with that profession. Section 6701 Bus. & Prof. Code. It seems quite clear that the private detective license law was not intended by the legislature to place a limitation on the right of professional engineers to make chemical tests, conduct experiments and to testify in court as to the results thereof. A physician, geologist, accountant, engineer, surveyor or a handwriting expert, undoubtedly, may lawfully testify in court in connection with his findings without first procuring a license as a private detective, and, as in the instant case, a photographer may be employed to take photographs of damaged premises for use in court without procuring such a license. Likewise, plaintiff Wolfe, who was hired as a consultant and expert and not as a private detective and investigator was not required to have a license as such before being permitted to testify in court as an expert."

In Benton v. Union Pacific Railroad Co., 430 F.Supp. 1380 (D. Kan. 1977), the United States District Court held that:

"A Kansas Statute adopted from another state carries with it the construction placed upon it by the courts of that state."

Although there is no finding that our Private Investigator statutes were modeled after California's, the similarity in

language tends to bring the statutes under the purview of Benton.

Further, in 26A C.J.S. Detectives §3 it is stated that a "license law" need not apply to persons conducting tests, or consulting in cases requiring the use of their technical knowledge.

It is our opinion that, following the reasoning of Kennard and Benton, Kansas would exempt engineers and private arson investigators offering expert testimony in court from K.S.A. 75-7b01a licensure requirements.

Kansas State Fire Marshall Ed C. Redmon also asks whether an expert witness has to be licensed by Kansas in the field in which he is testifying in order to qualify as an expert.

Presently there are no Kansas statutes that mandate a license within a specialty field in order to be deemed an expert witness. Specifically, K.S.A. 60-456(b) states that expert witnesses are limited to, "facts or data perceived by or personally known . . . to the witness, and within the scope of the special knowledge, skill, experience . . . possessed by the witness."

In Hayes v. United States, 367 F.2d 216, 222 (1966) the Tenth Circuit held:

"It is well settled law that medical experts may . . . testify in matters concerning which they are qualified, even though they may not be licensed to practice medicine in the jurisdiction involved." [32 C.J.S. Evidence §546 (92) pp. 336-346].

In Dickey v. Corr-A-Glass, 3 Kan. App. 2d 721 (1979), the Kansas Appeals Court reaffirmed stating:


"we hold that a witness may not be disqualified from testifying as an expert solely because he is not licensed in this state."


Citing both Hayes and Dickey as precedent, it is our opinion that a person deemed by the court to be testifying as an expert need not be licensed within that profession by the State of Kansas.

Accordingly, our responses to the specific questions which have been posed are as follows:

- 1) Engineers and private investigators are exempt from K.S.A. 75-7b01 et seq., private investigator licensure requirements.
- 2) Expert witnesses may testify in Kansas to matters in which they are qualified without being licensed in that profession by the State of Kansas.

Very truly yours,


ROBERT T. STEPHAN
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