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ATTORNEY GENERAL OPINION NO. 91- 16

Ted D. Ayres
General Counsel
Kansas Board of Regents
Suite 609, Capitol Tower
400 S.W. 8th
Topeka, Kansas 66603-3911

Re: Mentally Ill, Incapacitated and Dependent Persons;
Social Welfare -- Physically Disabled Persons --
Use of Support Dogs by Physically Disabled Persons

Synopsis: The term "physical disability" as it is used in the physically disabled persons act, is to be interpreted to encompass any physical disability. Verification of training and certification of a support dog may be obtained only from the training and certifying organization or individual. The University of Kansas campus at Lawrence may be considered one "public facility" as that term is used in the physically disabled persons act. The Kansas board of regents may not request or require a physically disabled person to contact a particular campus office before that person enters university buildings with a support dog. Cited herein: K.S.A. 39-1101; K.S.A. 1990 Supp. 39-1102; K.S.A. 39-1107; K.S.A. 1990 Supp. 39-1108.

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Dear Mr. Ayres:

As general counsel for the Kansas board of regents you request our opinion on a number of issues relating to the physically disabled persons act, K.S.A. 39-1101 et seq. and amendments thereto.

The physically disabled persons act furthers the policy of the state of Kansas "to encourage and enable the blind, the visually handicapped and persons who are otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment." K.S.A. 39-1101. This is accomplished in part by granting physically disabled persons full access to various types of public conveyances and facilities. K.S.A. 39-1101. The act further provides that those persons shall have the right to be accompanied by especially trained dogs, guide dogs for totally or partially blind persons (K.S.A. 1990 Supp. 39-1102), hearing assistance dogs for hearing impaired persons (K.S.A. 39-1107), and support dogs for otherwise physically disabled persons (K.S.A. 1990 Supp. 39-1108).

The questions you pose are specifically in relation to K.S.A. 1990 Supp. 39-1108 which provides:

"Every person with a physical disability shall have the right to be accompanied by a support dog, especially trained and certified for the purpose which shall include, but not be limited to, pulling a wheel chair, opening doors and picking up objects, in or upon any of the places listed in K.S.A. 39-1101 and amendments thereto without being required to pay an extra charge for the support dog. Such person shall be liable for any damage done to the premises by such dog."

You first ask what definition of physical disability should be used in the interpretation and application of that statute. Although the legislature did not define the term "physical disability," guidance may be obtained from the minutes of the house committee on public health and welfare which received testimony March 13, 1989 regarding this measure. A number of people testified in support of what was then Senate Bill No. 36, including Senator Jerry Moran.

"Senator Jerry Moran offered his support to SB 36, noting Ms. Burge is a constituent in his district and he would like statutes expanded so that Ms. Burge and others will have access to public places for their support dogs. It was decided on the Senate floor the restrictions placed in this bill would be for the certification and training of the dog, not the severity of the disability of the human being using the animal. . . ."

Given the absence of a statutory definition of "physical disability" as used in this act and Senator Moran's testimony, it is our opinion that the legislature did not intend to limit the types of physically disabled persons to whom the act would apply. The applicability of K.S.A. 1990 Supp. 39-1108 is however limited to persons with physical disabilities. We mention this because there are four main categories of assistant dogs: service dogs which aid persons with orthopedic challenges, signal dogs which alert the hearing impaired and deaf to crucial sounds, specialty dogs which are trained for persons with multiple handicaps and social dogs who are placed with individuals or in institutions as a part of pet facilitated therapy. Minutes of the House Committee on Public Health and Welfare, March 13, 1989. The last category of dogs and owners does not fall within the provisions of K.S.A. 1990 Supp. 39-1108. As a consequence, should a question arise regarding any individual not clearly physically disabled who is accompanied by a dog, a university may appropriately inquire whether that person is physically disabled, and if so, the nature of the physical disability.

You next pose the question regarding what constitutes a "trained and certified" support dog. While the legislature has required support dogs to be "trained and certified," the legislature did not provide for a certifying state agency. In the absence of a state certification program, the question thus becomes what meaning the term "certification" has as used in K.S.A. 1990 Supp. 39-1108.

To "certify" means to testify in writing, to make known or establish as a fact, or to vouch for a thing in writing. Blacks Law Dictionary, p. 207 (5th Ed. 1979). To "certify" has also been said to mean to attest authoritatively, and any form which affirms the fact in writing is sufficient. Doherty v. McDowell, 276 F. 728, 730 (1921).

Since the state has not provided for a certification mechanism for support dogs, the establishment of a dog as a trained support dog must be provided in written form by the trainer of the dog, whether an individual or an organization. We have learned that nationwide there are up to 50 organizations which train support dogs to provide varying support services to individuals with physical disabilities. Once the dog has completed its training, which includes training with its proposed physically disabled owner, the training organization issues a tag to the dog and/or an identification card to the owner. Any question regarding the certification of a particular support dog must be directed to the training organization. Until such time as the state of Kansas certifies or licenses support dogs, there simply is no other mechanism to verify a particular dog's certification as a support dog.

You also ask whether, for purposes of consistency and centralization of administration, the board of regents may treat the University of Kansas campus as one "public facility" pursuant to K.S.A. 39-1101 and either request or require a physically disabled person to contact a particular office on campus before entering other university buildings with a support dog. We see no reason why the entire campus may not be treated as one public facility. However, K.S.A. 39-1101 provides that physically disabled "persons shall have the same right as the able-bodied to the full and free use of . . . public facilities." Since able-bodied persons are not requested or required to contact any particular office before entering university buildings, it is our opinion that such a requirement for physically disabled persons would vitiate the same right to the full and free use of public facilities as is enjoyed by the able-bodied.

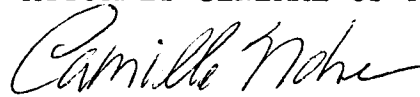
In conclusion, the term "physical disability" as it is used in the physically disabled persons act, is to be interpreted to encompass any physical disability. Verification of training and certification of a support dog may be obtained only from the training and certifying organization or individual. The University of Kansas campus at Lawrence may be considered one "public facility" as that term is used in the physically disabled persons act. The Kansas board of regents may not request or require a physically disabled person to contact a

particular campus office before that person enters university buildings with a support dog.

Very truly yours,



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