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ATTORNEY GENERAL OPINION NO. 91- 74

Paul J. Morrison
District Attorney
10th Judicial District
Johnson County Courthouse
P.O. Box 728, 6th Floor Tower
Olathe, Kansas 66061

Re: Civil Procedure -- Protection From Abuse Act --
Definition of "Abuse"

Synopsis: The word "access" as used in the Kansas protection
from abuse act does not connote "legal access" to
the residence. If at any time in the past persons
resided together the act is applicable. Cited
herein: K.S.A. 1990 Supp. 60-3101; 60-3102.

* * *

Dear Mr. Morrison:

As district attorney for the 10th judicial district you ask
our opinion regarding the definition of "abuse" as found in
the Kansas protection from abuse act, K.S.A. 60-3101 et
seq. and amendments thereto. Specifically, you ask about
the significance of the 1987 legislative deletion of the word
"legal" from the former statutory language "legal access" in
the definition of "abuse." K.S.A. 1990 Supp. 60-3102. In
addition, you request our opinion regarding the meaning of the
phrase "formerly resided together" as found in the definition
of "abuse."

When the protection from abuse act was originally enacted in 1979, "abuse" was defined to mean:

"The occurrence of one or more of the following acts between family or household members who reside together, or who formerly resided together and both parties continue to have legal access to the residence:" L. 1979, ch. 92, § 2.

In 1983 the phrase "family or household members" was deleted from the definition of "abuse" and the word "persons" was inserted in its stead. L. 1983, ch. 201, § 1. This change broadened the class of persons who could obtain protection under the act.

It was in 1987 that the word "legal" was deleted from the phrase "legal abuse" in the definition of "abuse." L. 1987, ch. 228, § 2. As presently found in K.S.A. 1990 Supp. 60-3102 "abuse" is defined to mean:

"The occurrence of one or more of the following acts between persons who reside together, or who formerly resided together, and both parties continue to have access to the residence:" (Emphasis added).

Despite the deletion of the word "legal" from the phrase "legal access," you inform us that in practice the word "access" is still being taken to infer some sort of "legal" access, thus denying to some victims of domestic violence protection otherwise available under the act. This practice prompts your concern as well as your request for an interpretation of the word "access" in light of legislative removal of the word "legal" as a modifier.

The legislative rationale for removal of the word "legal" from the phrase "legal access" is readily found in the legislative history of 1987 House Bill No. 2463 in which that amendment was made to K.S.A. 1990 Supp. 60-3102, the definition of "abuse." In the meeting of the senate committee on judiciary held March 31, 1987, two conferees appearing before the committee addressed precisely the issue at hand.

"LEGAL ACCESS TO THE RESIDENCE: The current statute requires that a victim not

only be physically abused - it also imposes a 'jurisdictional' requirement that both parties continue to have legal access to the residence. This requirement prevents use of the Act when the offender is not a party to the lease or rental agreement for the property in which the plaintiff resides. It keeps lawyers from using the Act to protect women who are being persecuted by boyfriends or ex-husbands who do not have the legal right to be residing in the home of the victim. There seems to be no credible rationale for keeping this jurisdictional requirement in the act. We are requesting that this language be removed from the first paragraph to K.S.A. 60-3102." Minutes, Senate Committee on Judiciary, March 31, 1987, Attachment II.

"The proposed language striking the requirement for 'legal access to the residence' is needed in that a legal impediment to the relief of the act would be removed for those victims who could otherwise meet this technical requirement. While the original intent may have been to ensure that an owner of property was not ousted by a person under the provisions of the Act, the requirement is unnecessary as the Act already provides specifically an Order may not grant possession of property to the exclusion of a sole owner. As the Act now reads, a victim, whose abuser had formerly resided with her but whose name does not appear on the lease, would not have the relief under the Act available to her as her abuser does not have 'legal access' to the residence." Minutes, Senate Committee on Judiciary, March 31, 1987, Attachment III.

Following that testimony a successful motion was made and carried to amend the bill by striking the word "legal" from the definition of "abuse." Minutes, Senate Committee on Judiciary, April 2, 1987. The amendment was subsequently enacted with the passage of L. 1987, ch. 228, § 2.

It is also worthwhile to note that an introductory paragraph was also inserted in the protection from abuse act in 1987. L. 1987, ch. 228, § 1(b). That language is now codified at K.S.A. 1990 Supp. 60-3101(b) which reads as follows:

"This act shall be liberally construed to promote the protection of victims of domestic violence from bodily injury or threats of bodily injury and to facilitate access to judicial protection for the victims, whether represented by counsel or proceeding pro se."

Based on the foregoing it is our opinion that the legislature acted deliberately and consciously to correct the situation described by the Senate conferees. This was done by the removal of the word "legal" from the phrase "legal access," thus removing what had been a jurisdictional bar to some victims of domestic violence. That is, with the word "legal" removed, it became irrelevant for purposes of protection from abuse whose name was on the lease or title to property. Protection under the act became available as against any former resident who continued to have a key to the residence. In our opinion the word "access" as used in the act no longer has any sort of connotation which might imply or infer "legal" access. Mere access is sufficient under the act.

You next inquire about the phrase "formerly resided together." This question likewise arises from your practice as district attorney. You inform us that some of the judges in your district consider the act inapplicable if the parties have not resided together for a significant period of time. It is in light of this situation that you request our opinion regarding the meaning of the phrase "formerly resided together" as used in the act.

Initially we note that while the class to whom protection under the act is available has changed from "family or household members" to "persons," the act has always offered protection to members of the class "who reside together, or who formerly resided together." The phrase "formerly resided together" is not defined by the act.

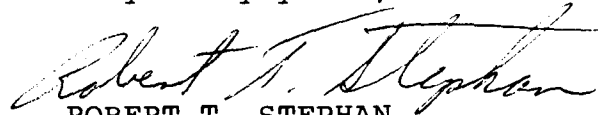
It is a fundamental principle of statutory construction that words in common usage are to be given their natural and ordinary meaning in arriving at the proper construction of a statute. Szoboszlay v. Glessner, 233 Kan. 475, 478 (1983). The ordinary meaning of the word "formerly" is "at or


in a former or earlier time; in the past." Websters New World Dictionary, p.548, 2nd College Ed. (1986). Accordingly, the phrase "formerly resided together" means "resided together at an earlier time" or "resided together in the past." The ordinary definition of the phrase "formerly resided together" is therefore without qualifiers as to time limitations.

The act is designed to protect persons who are subject to violence arising out of a domestic relationship, usually understood to be one of intense emotion. As the emotions know no "statute of limitations," so the act wisely does not provide any time limits for when the "residing together" must have occurred. The act appears to recognize that abusiveness may arise long after the domesticity has ended.

It is therefore our opinion that if at any time in the past persons resided together, (assuming other statutory criteria are met) the act is applicable to provide protection from abuse.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Camille Nohe
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