



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

October 15, 1991

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 91-129

The Honorable Norma L. Daniels  
State Senator, Thirty-First District  
130 S. Miles Avenue  
P.O. Box 128  
Valley Center, Kansas 67147

Re: Public Health--Uniform Vital Statistics  
Act--Registration of Deaths and Stillbirths; Filing  
of Certificates

Synopsis: A stillbirth certificate must be filed for every  
stillbirth, as defined by K.S.A. 65-2401(3),  
whether induced or spontaneous. Burial services  
conducted by anyone other than the family or  
religious group of the deceased must be supervised  
by a licensed funeral director. Cited herein:  
K.S.A. 21-410 (repealed, L. 1969, ch. 180, §  
21-4701); 21-437 (repealed, L. 1969, ch. 180, §  
21-4701); 21-3407; 65-445; 65-1713b; 65-2401;  
65-2402; K.S.A. 1990 Supp. 65-2406; 65-2412; K.S.A.  
65-2434; L. 1951, ch. 355, §§ 1, 13; L. 1969,  
ch. 180, § 21-3407; L. 1969, ch. 182, § 3;  
K.A.R. 28-17-1; 63-1-1; 63-2-1.

\*

\*

\*

Dear Senator Daniels:

You request our opinion regarding portions of the vital  
statistics act, K.S.A. 65-2401 et seq., and the scope of  
K.S.A. 65-1713b.

Your first question is whether failure to file a stillbirth certificate when a fetus of at least 351 grams is "expelled or extracted from its mother as the result of an intentional termination of the mother's pregnancy" is a violation of the act and, if so, what penalties are applicable to such violation and who is charged with enforcement. K.S.A. 1990 Supp. 65-2412 provides in part:

"(a) A death certificate or stillbirth certificate for each death or stillbirth which occurs in this state shall be filed with the state registrar within three days after such death [or stillbirth].

. . . .

"(b) The funeral director or person acting as such who first assumes custody of a dead body or fetus shall file the death certificate [or stillbirth certificate].

. . . .

"(d) In every instance a certificate shall be filed prior to interment or disposal of the body."

"Stillbirth" is defined at K.S.A. 65-2401(3) as:

"any complete expulsion or extraction from its mother of a product of human conception the weight of which is in excess of 350 grams, irrespective of the duration of the pregnancy, which is not a live birth as defined in this act."

Thus, the vital statistics act clearly requires filing of a stillbirth certificate for every stillbirth as defined by K.S.A. 65-2401(3). That definition does not distinguish between intentional (or induced) and natural (or spontaneous) terminations of pregnancy which result in other than a live birth. Thus, we believe that failure to file a stillbirth certificate for any stillbirth occurring in this state is a violation of K.S.A. 1990 Supp. 65-2412 whether the stillbirth is a result of induced termination of the pregnancy or spontaneous fetal death. The penalty for such violation is a fine of not more than \$100. K.S.A. 65-2434(3). The secretary

of health and environment and the state registrar are charged with enforcing the provisions of the vital statistics act (K.S.A. 65-2402; K.S.A. 1990 Supp. 65-2406), however, there is no mechanism by which the secretary or the state registrar may impose such fines. Since the penalties provided in K.S.A. 65-2434 appear to require prosecution, we believe it would appropriately be enforced by the local county or district attorney or the attorney general. See K.A.R. 28-17-1.

By letter dated November 20, 1989 the state registrar advised that filing of stillbirth certificates is not required for intentional terminations of pregnancy. The letter suggested an abortion form be filed instead of a stillbirth certificate. This instruction was given in an effort to preserve the ability to derive the needed statistics and information from the stillbirth certificates. According to the state registrar, mixing induced terminations with spontaneous fetal deaths distorts the picture vital statistics are meant to portray. However, while we can appreciate the registrar's intentions, we find no authority for distinguishing induced from spontaneous stillbirths in either the statutes or the agency's administrative regulations, K.A.R. 28-17-1 et seq. The national center for health statistics' model definitions segregating induced from spontaneous stillbirths have not been legally adopted.

Further, even if we believed the statute to be ambiguous, legislative history does not evidence a clear intent to separate induced and spontaneous stillbirths. As originally enacted, the vital statistics act defined stillbirth as "a birth after twenty (20) weeks gestation which is not a live birth." L. 1951, ch. 355, § 1. At that time abortions were generally prohibited but could be performed to preserve the life of the mother. R.S. 1923, §§ 21-410, 21-437 (repealed L. 1969, ch. 180, § 21-4701). Further, the vital statistics act itself recognized that stillbirths could be the result of other than natural causes. Section 13 of the act stated in part:

"If the circumstances suggest that the death or stillbirth was caused by other than natural causes, the local registrar shall refer the case to the coroner for investigation and certification." L. 1951, ch. 355, § 13(3).

Thus, the statutes appeared to contemplate filing certificates for lawfully induced as well as spontaneous stillbirths. In 1969 the legislature enacted a requirement for hospitals to report all lawfully terminated pregnancies (L. 1969, ch. 182, § 3, codified at K.S.A. 65-445), but this was done in conjunction with broadening the circumstances under which an abortion could lawfully be performed (L. 1969, ch. 180, § 21-3407) and not as an amendment to the vital statistics act. (The abortion reports do not state a fetal weight or the names of the parents.) Thus, a hospital's report of abortions performed pursuant to K.S.A. 65-445 appears to be in addition to, rather than a replacement of, the requirement to file stillbirth certificates for induced stillbirths. Even though we disagree with the state registrar's position, however, it would be inappropriate to prosecute for past violations, if any, done in reliance on the November 20, 1989 letter.

You next ask whether a product of human conception extracted by intentional termination of a pregnancy may be interred without compliance with K.S.A. 65-1713b. This statute provides as follows:

"Every funeral service or interment, or part thereof, hereafter conducted in this state must be in the actual charge and under the supervision of a Kansas licensed funeral director, or of the duly licensed assistant funeral director: Provided, however, That this shall not prevent a family from burying its own dead where death did not result from a contagious, infectious or communicable disease, nor shall it prevent a religious group or sect whose religious belief require [sic] the burial of its own dead from conducting such services where death did not result from a contagious, infectious or communicable disease."

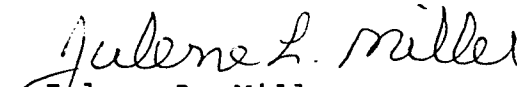
The term "funeral service" is defined by regulation as "religious services or other rites or ceremonies with a dead human body present." K.A.R. 63-1-1(f); 63-2-1. The term "inter" is not defined by statute or regulation, but is generally defined as "to place in a grave; bury." The American Heritage Dictionary 683 (New College Ed. 1976). Essentially, this statute requires that burials and funeral services be conducted or supervised by a licensed funeral director, unless the family or religious group of the deceased

chooses to conduct the burial or service themselves when death did not result from a contagious, infectious or communicable disease. Thus, if a burial or funeral service is to be conducted by anyone other than the family or a religious group, it must be supervised by a licensed funeral director. We note that cremation in and of itself is not a burial or funeral service covered by this provision.

In conclusion, a stillbirth certificate must be filed for every stillbirth, as defined by K.S.A. 65-2401(3), whether induced or spontaneous. Burial services conducted by anyone other than the family or religious group of the deceased must be supervised by a licensed funeral director.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm