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April 15, 2013

ATTORNEY GENERAL OPINION NO. 2013- 09

Dr. Robert Moser, Secretary
Kansas Department of Health and Environment
1000 SW Jackson St., Suite 560
Topeka, KS 66612

Re: Public Health–Maternity Centers and Child Care Facilities–License or Temporary Permit Required; Exemptions; Definitions; Competent Supervision and Care of Children

Synopsis: A boarding school is a child care facility for the purposes of K.S.A. 65-501 *et seq.* Cited herein: K.S.A. 1997 Supp. 65-501; K.S.A. 65-501; K.S.A. 1997 Supp. 65-503; K.S.A. 2012 Supp. 65-503; K.S.A. 1997 Supp. 65-508; K.S.A. 2012 Supp. 65-508.

* * *

Dear Dr. Moser:

As Secretary for the Kansas Department of Health and Environment (KDHE), you ask whether a boarding school is required to be licensed as a child care facility pursuant to K.S.A. 65-501 *et seq.* In your letter, you state that it is the position of KDHE that a boarding school falls within the definition of “child care facility” and, as such, must obtain a license from KDHE.¹ You further state that it has been suggested that a boarding school is not a child care facility because those terms are separately defined in K.S.A. 65-501 *et seq.*, and because legislative history indicates that the legislature did not intend to define “child care facility” to include boarding schools.

¹ K.S.A. 65-501 (“It shall be unlawful . . . to conduct or maintain . . . a child care facility for children under 16 years of age without having a license or temporary permit therefor from the secretary of health and environment.”).

When interpreting statutes, the fundamental rule is that the purpose and intent of the legislature governs if that intent can be ascertained.² “In construing statutes, the legislative intention is to be determined from a general consideration of the entire act.”³ “The several provisions of an act, *in pari materia*, must be construed together with a view of reconciling and bringing them into workable harmony and giving effect to the entire statute if it is reasonably possible do to so.”⁴

Following these rules of statutory construction, we consider the various provisions of K.S.A. 65-501 *et seq.* to determine whether a boarding school is a child care facility for the purposes of the act.

The definitions of child care facility and boarding school are found in K.S.A. 2012 Supp. 65-503. A child care facility is defined in relevant part as “[a] facility maintained by a person who has control or custody of one or more children under 16 years of age, unattended by parent or guardian, for the purpose of providing the children with food or lodging, or both”⁵ A boarding school is separately defined as “a facility which provides 24-hour care to school age children, provides education as its primary function, and is accredited by an accrediting agency acceptable to the secretary of health and environment.”⁶

K.S.A. 2012 Supp. 65-508(c)(1) authorizes KDHE to develop and adopt rules and regulations designed to promote the health, safety and welfare of any child served in a child care facility. The last sentence of that subsection states, “Boarding schools are excluded from requirements regarding the number of qualified persons who must supervise and provide care to residents.” Aside from this language and the definition of boarding school in K.S.A. 2012 Supp. 65-503, there is no other mention of the term “boarding school” in K.S.A. 65-501 *et seq.*

Turning to the definition of child care facility in K.S.A. 2012 Supp. 65-503(c)(1), the plain language of that definition appears to include boarding schools. A boarding school has control or custody over one or more children under 16 years of age, unattended by parent or guardian. While the primary function of a boarding school is to provide an education, such schools also provide food and lodging to children who are attending the school. Therefore, based upon the plain language of K.S.A. 2012 Supp. 65-503(c)(1), we opine that a boarding school is a *type* of child care facility for the purposes of K.S.A. 65-501 *et seq.*

Based on the rules of statutory construction, and because the plain language of the statute is clear, we need not consider legislative history. However, in your letter, you advise that it has been suggested that by separately defining “boarding school,” the Kansas Legislature intended to exclude boarding schools from the definition of child

² See, e.g., *State v. Comprehensive Health of Planned Parenthood*, 291 Kan. 332, 357 (2010).

³ *State v. Adee*, 241 Kan. 825, 829 (1987).

⁴ *Easom v. Farmers Ins. Co.*, 221 Kan. 415, Syl. ¶ 3 (1977).

⁵ K.S.A. 2012 Supp. 65-503(c)(1).

⁶ K.S.A. 2012 Supp. 65-503(f).

care facility and therefore exempt boarding schools from KDHE licensure. K.S.A. 65-501 expressly exempts from the KDHE licensure requirement residential facilities or hospitals that are owned and maintained by a state agency⁷ and summer instructional camps.⁸ Notably, boarding schools are not listed as an entity exempt from the licensure requirement. Arguably, the failure to do so resolves the issue of a licensure exemption for boarding schools. Nevertheless, we consider the legislative history of the statutes in question to specifically address this argument.

The term “boarding school” did not appear in K.S.A. 65-501 *et seq.* until 1998, when the Kansas Legislature passed House Bill 2837 (HB 2837).⁹ That bill added the definition of boarding school to K.S.A. 1997 Supp. 65-503, and also amended K.S.A. 1997 Supp. 65-508(c)(1) to add the language excluding boarding schools from KDHE staffing requirements.¹⁰ HB 2837 did *not* amend K.S.A. 1997 Supp. 65-501, which identifies entities that are exempt from the licensure requirement. We note that the legislature could have added boarding schools to the list of exempt entities but did not do so.

Legislative testimony in support of HB 2837 indicates that the bill was introduced at the request of St. John’s Military School in Salina, Kansas, for the purpose of exempting boarding schools such as St. John’s from the minimum staffing levels required by KDHE regulations governing licensed child care facilities.¹¹ Proponents of the bill testified that it would “maintain health and safety requirements” and would “recognize the mission of boarding schools as being one of education rather than simply care and treatment of children.”¹² This testimony shows that the legislative intent was to grant boarding schools a limited exception from the staffing requirements rather than a complete exemption from the licensure requirement.

In addition, the Secretary of KDHE testified that “[b]oarding schools are considered boarding homes for children.”¹³ Prior to the 1994 legislative session, there was a category of facility called “boarding home for children.” During the 1994 session, the legislature amended K.S.A. 65-503 to replace the term “boarding home for children” with “child care facility,” but did not change the substantive definition of that term.¹⁴ Thus, the Secretary’s testimony expressed KDHE’s understanding that boarding schools are child care facilities as defined by K.S.A. 65-503.

Courts presume that the legislature does not intend to enact meaningless legislation.¹⁵ If boarding schools did not fall within the definition of child care facility, then the

⁷ K.S.A. 65-501(a).

⁸ K.S.A. 65-501(b).

⁹ L. 1998, Ch. 166.

¹⁰ See K.A.R. 28-4-271.

¹¹ *Minutes*, House Committee on Education, February 23, 1998, Attachments 3 and 4; *Minutes*, Senate Committee on Education, March 11, 1998, Attachments 5 and 7.

¹² *Id.*

¹³ *Minutes*, House Committee on Education, February 23, 1998, Attachment 4; *Minutes*, Senate Committee on Education, March 11, 1998, Attachment 7.

¹⁴ L. 1994, Ch. 279, § 6.

¹⁵ See, e.g., *Kansas Dept. of Revenue v. Powell*, 298 Kan. 564 (2010).

amendment to K.S.A. 1997 Supp. 65-508(c)(1) in HB 2837 would be meaningless. There would be no need to exclude boarding schools from KDHE's staffing requirements if those requirements never applied in the first place. Indeed, legislative testimony in support of HB 2837 acknowledged that boarding schools are subject to KDHE licensure as a child care facility, and the bill would not disturb KDHE's health and safety requirements for boarding schools. Therefore, construing the various provisions of HB 2837 together, it is our opinion that the definition of boarding school was added not to create a class of facilities separate from child care facilities, but rather to clarify the meaning of the amendment to K.S.A. 1997 Supp. 65-508(c)(1).

The statutory provisions enacted in 1998 by HB 2837 have not been amended in any manner that would alter the above analysis. Reading those statutes *in pari materia*, we conclude that the definition of boarding school in K.S.A. 2012 Supp. 65-503(f) does *not* create a class of facilities outside the definition of child care facility, but instead defines a subset of child care facilities that are exempt only from KDHE's staffing requirements. We find no evidence of contrary legislative intent that would conflict with this interpretation. Therefore, we opine that a boarding school is a child care facility for the purposes of K.S.A. 65-501 *et seq.*

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
Assistant Attorney General