

STATE OF KANSAS

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February 13, 1980

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ATTORNEY GENERAL OPINION NO. 80-41

Mr. Thomas H. Sullivan
Phillips County Attorney
Phillips County Courthouse
Phillipsburg, Kansas 67661

Re: Infants--Juvenile Code--Placement of
Delinquent Child

Synopsis: A child who has been found delinquent may, pursuant to K.S.A. 1979 Supp. 38-826(a)(2), be placed by a court in the care, custody and control of a "suitable person," subject to such terms and conditions as the court itself may deem proper. Such a suitable person does not fall under the provisions of K.S.A. 1979 Supp. 65-501 and 65-503, as those statutes provide for the licensing of boarding homes for children which are conducted or maintained on an on-going basis.

* * *

Dear Mr. Sullivan:

In your letter of January 17, 1980, you have requested an opinion of this office addressing the following question:

"Do the provisions of K.S.A. 65-501 and 65-503 requiring state licensing of boarding homes for children apply to court-ordered placements of delinquent children under sixteen years of age made pursuant to K.S.A. 38-826(a)(2)?"

You inform us by way of background that this situation arose after a juvenile under sixteen years of age was found to be miscreant by the District Court of Phillips County. He was placed in the custody of the Department of Social and Rehabilitation Services (SRS) and after temporary stays for evaluation in several youth facilities, was returned to his home on a trial basis. Following another incident, he was found to be delinquent by the court and was placed in the care, custody and control of a family whom the court found to be suitable persons, pursuant to K.S.A. 1979 Supp. 38-826(a)(2). The previous placement with SRS was terminated at this time.

However, SRS has taken the position that the home in which the child was placed must be licensed, as it is a boarding home for children as defined by statute. The family does not have a license at this time, and does not now have responsibility for the care of any other children. Additionally, they have not had any similar placements in their home in the past.

There can be no question that the court was empowered by statute to place the child where it did. K.S.A. 1979 Supp. 38-826 states in part:

"(a) When a child has been adjudged to be a delinquent child or a miscreant child under the provisions of this act, the judge of the district court may make one of the following orders:

.

"(2) place such child in the care, custody and control of a duly appointed juvenile probation officer or other suitable person, subject to such terms and conditions as the court may deem proper;

.

"(4) commit such child to the state secretary of social and rehabilitation services;

.

"(d) When a child has been committed to the state secretary of social and rehabilitation services, pursuant to paragraph (4) of subsection (a) or subsection (b) of this section, said secretary may place the child in any institution operated by the director of mental health and retardation services, or it may contract and pay for the placement of the child in a youth residential facility, a facility approved by the secretary as meeting licensing standards for youth residential facilities or in a community mental health clinic. . . ."

Additionally, K.S.A. 1979 Supp. 38-826a states:

"When a child has been committed to the secretary of social and rehabilitation services under the provisions of K.S.A. 1979 Supp. 38-824(b)(4) or K.S.A. 1979 Supp. 38-826(a) or (b): . . . (2) the court may make recommendations to the secretary as to where the child should be placed but the court shall have no power to direct a specific placement so long as the commitment remains with the secretary." (Emphasis added.)

From the above, it appears clear that the court retains control over the placement of a child found to be delinquent except in the situation where its disposition of the matter places the child under the care, custody and control of SRS. In the latter case, the court does not have the power to direct a specific placement. Rather, SRS may place the youth in one of a number of facilities, including an approved facility which meets the licensing standards for youth residential facilities. The court, on the other hand, may place the child with any "suitable person," subject to such terms and conditions as it prescribes. Such a disposition has been made here, and to find that the home involved also must meet state licensing standards would be an abridgement of the court's power to determine the best possible handling of the situation.

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Statutory licensing standards for youth residential facilities are inapplicable here for a second reason as well. The standards are contained in K.S.A. 1979 Supp. 65-501 and 65-503, which state as follows:

"It shall be unlawful for any person, firm, corporation or association to conduct or maintain a maternity or detention home for children under sixteen (16) years of age without having a license therefor from the secretary of health and environment. Nothing in this act shall apply to any state institution maintained and operated by the state." 65-501.

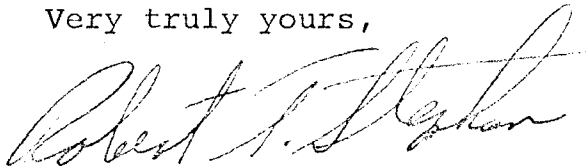
"The term boarding home for children as used in this act means: (a) A house or other place conducted or maintained by anyone who advertises or holds himself or herself out as conducting a boarding house or home for children under sixteen (16) years of age; or (b) a house or other place conducted or maintained by anyone who has in his or her control or custody one or more children under sixteen (16) years of age unattended by parent or guardian for the purpose of providing such children with food or lodging, or both, except children related to him or her by blood or marriage, or legal adoption; or (c) any children's home, orphanage, or any day nursery or other institution of a type determined by the secretary to require regulation under the provisions of this act or association, organization or individual engaged in receiving, caring for, or finding homes for orphans, dependent or neglected children under sixteen (16) years of age; or (d) any receiving or detention home for children under sixteen (16) years of age provided or maintained by, or receiving aid from any city or county or the state." (Emphasis added.) 65-503.

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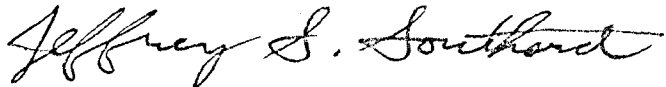
From the above, we would conclude that these statutes are not triggered by a court's placement of a child into the home of individuals who neither have "conducted or maintained" any facility for children in the past nor intend to in the future. As elaborated upon by K.A.R. 28-4-300 et seq., the intent of the licensing requirements is to deal with facilities run on a regular basis which provide this type of care to children. The requirements are numerous and detailed, and would greatly limit the number of families which could be eligible to receive a child through placement by the court. Without further legislative intent, we are unwilling to reach the extreme result that any family, no matter how "suitable" in the eyes of the court, may not have the care, custody and control of a child (subject to judicial supervision), unless it meets all the requirements contained in the administrative regulations. (For example, any house employed for such a purpose must have ceilings which are 7'8" high over 80% of the room area.)

In conclusion, a child who has been found delinquent may, pursuant to K.S.A. 1979 Supp. 38-826(a)(2), be placed by a court in the care, custody and control of a "suitable person," subject to such terms and conditions as the court itself may deem proper. Such a suitable person does not fall under the provisions of K.S.A. 1979 Supp. 65-501 and 65-503, as those statutes provide for the licensing of boarding homes for children which are conducted or maintained on an on-going basis.

Very truly yours,



ROBERT T. STEPHAN
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RTS:BJS:JSS:gk