



STATE OF KANSAS

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March 10, 1981

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ATTORNEY GENERAL OPINION NO. 81- 67

Ms. Karen Barefield  
Ottawa County Attorney  
Ottawa County Courthouse  
Minneapolis, Kansas 67467

Re: Mentally Ill, Incapacitated, Dependent Persons--  
Adult Care Homes--Rules and Regulations; Information  
Pertaining to Identity of Owners of Adult Care Homes

Synopsis: Nothing in the regulations affecting adult care homes promulgated by the department of health and environment requires adult care home owner-licensees or members of corporate boards of directors of adult care homes to supply their social security identification numbers or dates of birth to the department. Cited herein: K.S.A. 1980 Supp. 39-931, 39-931a, K.S.A. 39-932, K.A.R. 28-39-3, 28-39-33, 28-39-62.

\* \* \*

Dear Ms. Barefield:

You request our opinion whether K.S.A. 1980 Supp. 39-931 empowers the Kansas Department of Health and Environment to require members of the board of directors of an adult care home to supply their social security identification numbers and dates of birth to the department. You advise that board members of an adult care home in Ottawa County received a letter from the department requesting the social security numbers and dates of birth of all members of the board of directors. The department spokesperson advised in his letter that the information was required to permit the department to conduct a search for convicted felons, further noting that K.S.A. 1980 Supp. 39-931a authorizes the department to deny, revoke or suspend the license (to operate an adult care home) of any person who "has been convicted of a felony." See subsection (b)(2) of K.S.A. 1980 Supp. 39-931a.

We find no provisions in K.S.A. 1980 Supp. 39-931 or 39-931a which empower the department of health and environment to require owner-licensees to supply such information as social security identification numbers or birthdates of owners or of members of corporate boards of directors of adult care homes. We note that K.S.A. 39-932 authorizes the department to adopt rules and regulations "to further the accomplishment of the purpose of . . . [the] law in promoting safe, proper and adequate treatment and care of individuals in adult care homes."

We further note that, pursuant to K.S.A. 39-932, the department has promulgated regulations, including K.A.R. 28-39-3, pertaining to "skilled nursing homes", K.A.R. 28-39-33, pertaining to "intermediate care homes"; and K.A.R. 28-39-62, pertaining to "personal care homes." In subsection (A)(2) of each of said regulations is the following language:

"(2) The licensee shall provide ownership information as follows:

"(a) The identity of each person who has any direct or indirect ownership interest of 10 percent or more in the facility or who is the owner (in whole or in part) of any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by such facility or any of the property or assets of such facility.

"(b) In case a facility is organized as a corporation, of each officer and director of the corporation.

"(c) In case a facility is organized as a partnership, of each partner.

"(d) Prompt reports of any changes which would affect the current accuracy of the information required."

Obviously, nothing in the foregoing provisions, which appear in the above-noted regulations affecting adult care homes, requires owner-licensees to provide information such as social security identification numbers or birthdates of owners or members of boards of directors. The department's regulations require nothing more than the identity of persons with ownership interests, as defined in the regulations, and make no specific requirement that social security identification

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numbers or dates of birth of owners or of officers and directors shall be supplied.

We note further that federal law restricts the use of social security numbers by federal, state and local government agencies. Section 7 of Public Law 93-579 (Section 7 of the Privacy Act of 1974, now codified at 5 U.S.C.A. §552a note) provides:

"(a) (1) It shall be unlawful for any Federal, State or Local government agency to deny to any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his social security number.

'(2) the provisions of paragraph (1) of this subsection shall not apply with respect to --

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State or Local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

'(b) Any Federal, State, or Local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.'"

It appears, in view of the foregoing provisions of federal law, that the department could not now adopt regulations requiring disclosure of social security identification numbers. Of course, the individual may voluntarily disclose his social security number, but we find no statement in the department's regulations or in the department's letter, referred to above, informing the individuals concerned that disclosure is voluntary. In that respect, the department's request for disclosure does not comply with federal law.

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We are advised that the department seeks the information in question to facilitate a computer search for convicted felons conducted by the Kansas Bureau of Investigation. We are further advised, however, that the Bureau does not have need of social security identification numbers or of dates of birth to conduct such computer searches.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Steven Carr  
Assistant Attorney General

RTS:BJS:SC:hle