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October 9, 1985

ATTORNEY GENERAL OPINION NO. 85-138

T. R. Gross
Pawnee County Attorney
Pawnee County Courthouse
Larned, Kansas 67550

Re: Infants--Kansas Code for Care of Children--
Investigation of Child Abuse Reports

State Institutions and Agencies; Historical
Property--Social and Rehabilitative Institutions--
Larned State Hospital

Synopsis: Larned State Hospital employees, who are indirectly appointed by and are under the control of the Secretary of Social and Rehabilitation Services, are considered to be employees of the Department of Social and Rehabilitation Services. Such employees are therefore subject to the provisions of K.S.A. 1984 Supp. 38-1523(c), which requires that suspected child abuse or neglect by persons employed by the Department of Social and Rehabilitation Services be investigated by the appropriate law enforcement agency rather than the department. Cited herein: K.S.A. 1984 Supp. 38-1523; K.S.A. 75-7308b; 76-12a01; 76-12a02; 76-12a05.

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Dear Mr. Gross:

As Pawnee County Attorney and on behalf of Mr. Fred Ross of the court services office of the 24th Judicial District, you request our opinion as to the application of K.S.A. 1984 Supp. 38-1523(c) to Larned State Hospital employees.

K.S.A. 1984 Supp. 38-1523 sets forth guidelines for investigating reports of child abuse or neglect. As a general rule, the Department of Social and Rehabilitation Services (SRS) is the primary agency in charge of conducting such investigations. An exception to this rule is K.S.A. 1984 Supp. 38-1523(c), which reads as follows:

"(c) Investigation of certain cases.
Suspected child abuse or neglect by persons employed by or of children of persons employed by the state department of social and rehabilitation services shall be investigated by the appropriate law enforcement agency under the direction of the appropriate county or district attorney, and not by the state department of social and rehabilitation services." (Emphasis added.)

Your question is whether Larned State Hospital employees are employees of SRS and therefore covered by this particular provision.

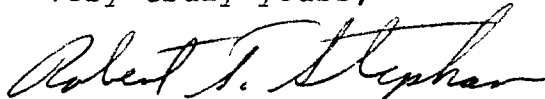
K.S.A. 76-12a01 et seq. are the statutes which govern the operation and management of Larned State Hospital. K.S.A. 76-12a02 provides that the commissioner of mental health and retardation services (a division of SRS pursuant to K.S.A. 75-5308b) is to appoint a superintendent, who in turn must appoint the employees of the institution as directed by K.S.A. 76-12a05. Thus, SRS has indirect control over the appointment of Larned State Hospital employees. Additionally, K.S.A. 76-12a06 confers upon the secretary of SRS "[a]ll jurisdiction, powers, functions and duties relating to . . ." Larned State Hospital. For these reasons, it is our opinion that Larned State Hospital employees are employees of SRS and are subject to the provisions of K.S.A. 1984 Supp. 38-1523(c).

Mr. Ross has indicated that perhaps the legislature did not intend K.S.A. 1984 Supp. 38-1523(c) to be read so broadly as to include employees of institutions such as Larned State Hospital. It is a well settled rule of statutory construction that the intent of the legislature governs the interpretation of the

statute. When determining legislative intent, the plain meaning of the language used in the statute controls, unless another meaning is apparent on the face of the statute. K.S.A. 77-201, subd. 2. The phrase in question is "employed by the state department of social and rehabilitation services." This phrase is in no way limited by the statute to include only licensed social workers or persons employed in SRS offices directly. Accordingly, in our opinion the statute was meant to include all SRS employees in the absence of any limiting language.

In conclusion, it is the purpose of K.S.A. 1984 Supp. 38-1523(c) to prevent any conflict of interest by SRS in conducting investigations into reports of child abuse and neglect and to insure unbiased and speedy action in all cases of suspected abuse. It is our opinion that the section should apply to all employees connected with SRS so that this purpose may be accomplished, including employees at Larned State Hospital.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Assistant Attorney General

RTS:JSS:JLM:jm