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November 12, 1985

ATTORNEY GENERAL OPINION NO. 85-154

The Honorable George R. Dean
State Representative, Ninety-Sixth District
2646 Exchange
Wichita, Kansas 67217

Re: Public Health--Maternity Hospitals or Homes and
Homes for Children--Persons Prohibited from Employment
Therein; Effect of Certain Misdemeanor Convictions

Synopsis: L. 1985, ch. 210, §1(a)(2) was enacted to include
certain juvenile offenders in the list of persons
prohibited from being employed in boarding homes for
children or family day care homes. The paragraph is
so worded as to include misdemeanor as well as felony
offenses. Cited herein: K.S.A. 21-3422; K.S.A.
1984 Supp. 21-3508; K.S.A. 21-3510; 21-3608; 21-4301;
21-4301a; L. 1985. Ch. 210, §1.

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Dear Representative Dean:

You request our opinion regarding the scope and effect of L. 1985, ch. 210, §1, which is an enactment prohibiting persons convicted of specified acts from being employed in boarding homes for children and family day care homes. Specifically, you inquire whether paragraph (2) of subsection 1(a) of the enactment should be interpreted to include misdemeanors, as well as felonies, in the phrase which reads "any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated. . . ." You cite as an example a young man who, as

a youth, was adjudicated a juvenile offender because of his participation in a "gang fight." While he has been working with "wayward boys" at Lake Afton Boys' Ranch, his job may now be in jeopardy depending whether L. 1985, Ch. 210, §1(a)(2) includes acts described in articles 34, 35 and 36 of chapter 21 which are misdemeanor offenses.

L. 1985, Ch. 210, §1(a) currently reads as follows:

"(a) No person shall knowingly maintain a boarding home for children or maintain a family day care home if, in such boarding home or family day care home, there resides, works or regularly volunteers any person who:

. . . .

"(2) has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of a felony and which is a crime against persons, is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto, or is any act described in K.S.A. 21-4301 or 21-4301a and amendments thereto or similar statutes of other states or the federal government;. . . ."

There are two possible interpretations of paragraph (2), depending how the paragraph is divided. An illustration of each possibility will help to demonstrate this:

Illustration #1

"(2) has been adjudicated a juvenile offender because of having committed an act which [a] if done by an adult would constitute the commission of a felony and which is a crime against persons, [b] is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated . . ., or [c] is any act described in K.S.A. 21-4301 or 21-4301a. . . ."

Illustration #2

"(2) has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the

commission of a felony and which [a] is a crime against persons, [b] is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated . . . , or [c] is any act described in K.S.A. 21-4301 or 21-4301a. . . ." (Emphasis added.)

The second interpretation would prohibit only those persons adjudicated as juvenile offenders for acts which would constitute a felony from working at boarding homes for children or family day care homes. The first interpretation would not only include acts which constitute felonies, but also any act described in articles 34, 35 or 36, regardless of whether those acts constitute felonies or misdemeanors.

It is our opinion that the first interpretation correctly gives effect to legislative intent. Paragraph (2) of L. 1985, Ch. 210, §1(a) parallels paragraph (1) of that subsection, which reads in pertinent part as follows:

"(1) (A) Has a felony conviction for a crime against persons, (B) has a felony conviction under the uniform controlled substances act, (C) has a conviction of any act which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated. . . , or (D) has been convicted of any act which is described in K.S.A. 21-4301 or 21-4301a. . . ."

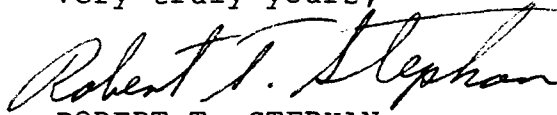
In our opinion, it is clear that this paragraph was intended to include not only the specified felony convictions, but also convictions of any act described in the listed articles, regardless of whether the offense is labeled a felony or a misdemeanor. Indeed, there are several misdemeanor offenses in articles 34, 35 and 36 of chapter 21 which are nonetheless offenses involving child victims and which should be included in any list of acts which preclude an individual from working closely with children. Among these are K.S.A. 21-3422 (interference with parental custody), K.S.A. 1984 Supp. 21-3508 (lewd and lascivious behavior), K.S.A. 21-3510 (indecent solicitation of a child), and K.S.A. 21-3608 (endangering a child).

Additionally, if we were to conclude that the second of the possible interpretations is correct, there would exist an incongruity within the paragraph. K.S.A. 21-4301 and 21-4301a, which are also included in §1(a)(2), are misdemeanors if the conviction is the first for such offense. The second illustrated interpretation (which prohibits only those acts which are felony

offenses if committed by an adult) would either render mention of K.S.A. 21-4301 and 21-4301a meaningless, or would allow persons with only one conviction to continue working or to be initially employed. In view of the purpose of the act (i.e. the protection of children in boarding homes) and the nature of these offenses (promoting obscenity), such a result cannot have been the intent of the legislature, and so should be avoided if at all possible. Matter of Reed's Estate, 233 Kan. 531, 541 (1983).

For these reasons, it is our opinion that L. 1985, Ch. 210, §1(a)(2) should be read to include misdemeanor as well as felony offenses. While this may bring about some unintended results, the language of the enactment cannot be interpreted otherwise and be consistent with legislative intent.

Very truly yours,



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RTS:JSS:JLM:jm