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ATTORNEY GENERAL OPINION NO. 87- 161

Mary Beth Mudrick
Executive Director
Kansas Board of Polygraphists
Second Floor, Kansas Judicial Center
Topeka, Kansas 66612

Re: State Departments; Public Officers and Employees--
Private Investigation or Security Operations--
Polygraphists

Synopsis: Although dual licensure of polygraphists appears unnecessary for the protection of the public health, safety and welfare, state statutes currently require polygraphists and polygraphist interns to be licensed both as polygraphists and private detectives. If the legislature intends to exempt polygraphists from the private investigative or security operations act, it must do so through actual amendment to the pertinent statutes. The rules of statutory construction do not allow repeal or amendment by implication in this situation. Cited herein: K.S.A. 75-7b01; L. 1987, ch. 283.

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Dear Ms. Mudrick:

As Executive Director of the Kansas Board of Polygraphists, you request our opinion regarding the licensure of polygraphists. Specifically, you question whether an individual who obtains a license as a polygraphist or polygraphist intern pursuant to L. 1987, ch. 283 must also

obtain a license as a private detective pursuant to K.S.A. 75-7b01 et seq. in order to conduct polygraph examinations.

In Opinion No. 74-6, Attorney General Vern Miller concluded that an individual who performs polygraph examinations for more than one client for any of the purposes listed in K.S.A. 75-7b01(a) is required to be licensed as a private detective pursuant to K.S.A. 75-7b01 et seq. We have subsequently adopted that conclusion. Attorney General Opinion No. 79-40. The question now arises whether the enactment of legislation specifically regulating the conduct of polygraph examinations would serve to negate the requirement of licensure as a private detective for persons performing polygraph examinations.

As a general rule, the repeal or amendment of statutes by implication is not favored. State v. Bell, 205 Kan. 380, 382 (1970). The courts recognize legislative repeal by implication only when "a manifest conflict between two statutes cannot be reconciled so as to give reasonable operative effect to both." Arkansas City v. Turner, 116 Kan. 407, 409 (1924). Similarly, the statutory construction rules that the latest legislative expression overrides an earlier legislative expression, and that statutes specific in nature control over more general statutes require irreconcilable conflict between the two statutory enactments. Szoboszlay v. Glessner, 233 Kan. 475, 479 (1983).

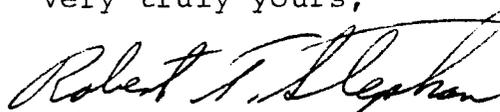
Currently the statutes pertinent to licensure of polygraphists do not conflict with the statutes regulating licensure of private detectives. The two sets of statutes are not repugnant to one another and it would be possible for an individual to obtain both licenses. Presumably, when the legislature enacted the polygraphist licensure provisions it had knowledge of the existence of the private detective statutes and could have indicated its intent to exempt polygraphists from the licensure provisions of the private detective act at that time had it so desired. This the legislature did not do.

In addressing a similar question, the Attorney General of Georgia reached a contrary conclusion. Op. Att'y Gen. 76-43 (Ga. 1976). However, in Georgia the statutes governing licensure of polygraphists, Ga. Laws 1968, p. 1217, were enacted five years prior to the enactment of the statutes governing licensure of private detectives, Ga. Laws

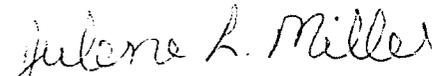
1973, p. 40. Thus, the statutory construction rules used in that opinion have the reverse effect in our situation.

Though it is probably not necessary for purposes of protecting the public health, safety and welfare to require dual licensure for a person whose sole detective business is the conducting of polygraph examinations, the rules of statutory construction do not allow a repeal of the private detective licensure provisions by implication. Thus, until the legislature specifically exempts polygraphists and polygraphist interns from the provisions of K.S.A. 75-7b01 et seq., persons conducting polygraph examinations after January 1, 1988 (the effective date of the polygraphist licensure provisions, L. 1987, ch. 283, §5) must be licensed both as polygraphists and private detectives.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm