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ATTORNEY GENERAL OPINION NO. 88- 67

The Honorable Edward F. Reilly, Jr.  
State Senator, Third District  
430 Delaware  
P.O. Box 9  
Leavenworth, Kansas 66048

The Honorable Martha Jenkins  
State Representative, Forty-Second District  
Route 1, Box 47  
Leavenworth, Kansas 66048

The Honorable Clyde Graeber  
State Representative, Forty-First District  
1900 Kingman  
Leavenworth, Kansas 66048

Re: State Departments; Public Officers and  
Employees--Department of Corrections--Placement and  
Evaluation of Female Offenders

Synopsis: While the secretary of corrections has broad  
discretion in designating the place of confinement  
for persons sentenced to his custody, current  
statutes prevent him from implementing a plan which  
would require female offenders to be conveyed  
directly to the Kansas correctional vocational  
training center, rather than the correctional  
institution at Lansing, and evaluated at the state  
reception and diagnostic center. Cited herein:  
K.S.A. 21-4609; K.S.A. 1987 Supp. 75-5202; K.S.A.  
75-5206; K.S.A. 1987 Supp. 75-5209; K.S.A. 75-5220;  
75-5229; 75-5262; 75-5264; 75-5283; L. 1973, ch.  
339; L. 1970, ch. 375, §§1, 2.

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Senator Edward F. Reilly, Jr.  
Representative Martha Jenkins  
Representative Clyde Graeber  
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Dear Senator Reilly, Representative Jenkins and  
Representative Graeber:

You request our opinion regarding the authority of the secretary of corrections. You explain that Secretary Endell presented the legislature with a plan to designate the Kansas correctional vocational training center (KCVTC) as the correctional institution to receive women sentenced to the custody of the secretary. According to Secretary Endell's plan, the women's correctional institution at Lansing would then become a part of the Kansas state penitentiary. Finally, the plan envisioned evaluations of female offenders in the secretary's custody at the state reception and diagnostic center rather than at the correctional institution at Lansing. These recommendations were not implemented by the legislature. You question whether the secretary of corrections may nevertheless accomplish these goals without legislative authorization or direction.

K.S.A. 75-5283 provides that the KCVTC shall be a "[continuation] of . . . the state minimum security institution established pursuant to section 1 of chapter 375 of the 1970 Session Laws of Kansas (K.S.A. 76-24b01, now repealed)." The purpose of the state minimum security institution was set forth in section 2 of L. 1970, ch. 375 as follows:

"The minimum security institution so established shall be used for the confinement, discipline, education, rehabilitation, care and reformation of such male persons as are committed thereto or who are transferred to such institution pursuant to K.S.A. 76-24a07. In carrying out the purpose of this act, the institution shall provide industrial, vocational and other training to inmates confined therein." (Emphasis added).

Thus, the legislature originally intended for this institution to serve as a facility for the confinement of male inmates.

Arguably the repeal of the above-quoted language, though preserved to some degree by K.S.A. 75-5283, left the secretary of corrections some discretion as to the use of the KCVTC. This position is bolstered by the broad authority given the secretary in K.S.A. 75-5206 to order confinement of any person to any facility under his control. This provision was a part

of the enactment that repealed the above-quoted language. L. 1973, ch. 339. Several administrations have in fact taken this position as evidenced by the fact that there are currently female inmates at KCVTC and have been for some time. Even so, however, the second part of Secretary Endell's plan, to make the correctional institution at Lansing a part of the Kansas state penitentiary, would be impeded by the provisions of K.S.A. 75-5220(b) and 75-5229(b). K.S.A. 75-5220(b) states that female offenders sentenced to the custody of the secretary of corrections are to be conveyed directly to the correctional institution at Lansing. Pursuant to K.S.A. 75-5229(b), such female offenders are to be evaluated at the correctional institution at Lansing or another state institution or local governmental or private facility as authorized by that subsection. Thus, though arguably female offenders could eventually be placed at the KCVTC, these specific legislative directions would preclude the secretary from sending female offenders directly to the KCVTC rather than to the correctional institution at Lansing. While we recognize that the secretary has broad discretion in designating the place of confinement for persons committed to his custody [see K.S.A. 21-4609; K.S.A. 75-5206; K.S.A. 1987 Supp. 75-5209; K.S.A. 75-5264; State v. Fowler, 238 Kan. 326, 334 (1985); State v Bennett, 240 Kan. 575, 577 (1987)], we do not believe he has the authority to ignore specific statutory directives.

Finally, the statutes currently preclude the evaluation of female offenders at the state reception and diagnostic center. K.S.A. 75-5229(b) provides in part:

"Every woman sentenced to the custody of the secretary of corrections shall be given a scientific examination and study and shall have a rehabilitation program planned and recommended for her. . . . At the direction of and in accordance with procedures prescribed by the secretary, the examination shall be given, the study shall be made and the rehabilitation program shall be prepared at the Kansas correctional institution at Lansing or at another appropriate state institution, other than a correctional institution, in the manner prescribed in K.S.A. 75-5209 and amendments thereto, or at a local governmental or private facility which has

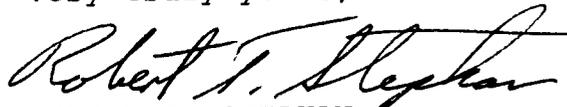
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been approved by the secretary for these purposes." (Emphasis added.)

The state reception and diagnostic center is by definition a "correctional institution." K.S.A. 1987 Supp. 75-5202(d). Thus, K.S.A. 75-5229(b) specifically precludes evaluation of female offenders at the center. Further, K.S.A. 75-5262(a) states that the primary purpose of the state reception and diagnostic center is to evaluate "felony offenders of the male sex," and K.S.A. 75-5220(b) provides that female offenders sentenced to the custody of the secretary of corrections "shall not be conveyed to the state reception and diagnostic center. . . ." These were provisions Secretary Endell sought to have amended this legislative session and we agree that such amendments are necessary to accomplish the desired goal of having female offenders receive at least a portion of their evaluation at the state reception and diagnostic center.

In conclusion, though the secretary of corrections has broad discretion in designating the place of confinement for persons sentenced to his custody, current statutes prevent him from implementing a plan which would require female offenders to be conveyed directly to the Kansas correctional vocational training center, rather than the correctional institution at Lansing, and evaluated at the state reception and diagnostic center.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm