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ATTORNEY GENERAL OPINION NO. 91- 103

Betty A. Bomar
Director
Crime Victims Compensation Board
Jayhawk Tower, 700 Jackson
Suite 400
Topeka, Kansas 66603

Re: Public Health--Professional Counselors--
Registration Required Prior to Certain
Representations; Construction of Act

State Boards, Commissions and Authorities--Crime
Victims Compensation Board--Compensation for Crime
Victims Economic Loss; Allowance Expense;
Counseling Services Provided by Rabbi, Priest,
Minister, or Clergy Person

Synopsis: Provided the activities or services of a rabbi,
priest, minister, or clergy person are within the
scope of the performance of such individual's
regular or specialized ministerial duties, such
individual need not be registered by the behavioral
sciences regulatory board. The crime victims
compensation board may accept as an allowance
expense payable by the board a statement for
counseling services provided by a rabbi, priest,
minister, or clergy person who is not registered
with the behavioral sciences regulatory board.
Cited herein: K.S.A. 1990 Supp. 65-5801; 65-5803;
65-5804; 65-5812; 65-6301; 74-5301; 74-5361;
74-7301; 74-7302.

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Dear Ms. Bomar:

As director of the crime victims compensation board (board), you request our opinion regarding whether the board may accept as an allowance expense a statement for mental health counseling services provided by a rabbi, priest, minister, or clergy person who is not registered with or licensed by the behavioral sciences regulatory board.

The crime victims compensation board is authorized to award compensation for economic loss arising from criminally injurious conduct. K.S.A. 1990 Supp. 74-7302. Among those losses for which the board may award compensation are allowance expenses. K.S.A. 1990 Supp. 74-7301(i). Allowance expenses are "reasonable charges incurred for reasonably needed products, services and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care. . . ." K.S.A. 1990 Supp. 74-7301(a). Policy of the board requires that medical providers be properly registered or licensed before services provided by such individuals will constitute an allowance expense that may be paid by the board.

The professional counselors registration act, K.S.A. 1990 Supp. 65-5801 et seq., requires that those individuals holding themselves out as registered professional counselors, registered counselors, or professional counselors be properly registered under the act. K.S.A. 1990 Supp. 65-5803. K.S.A. 1990 Supp. 65-5812 states that nothing in the act is to be construed:

"(d) to apply to the activities and services of a rabbi, priest, minister or clergy person of any religious denomination or sect, so long as such activities and services are within the scope of the performance of such individual's regular or specialized ministerial duties."

The fundamental rule of statutory construction is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute. Unified School District No. 279 v. Secretary of Kansas Department of Human Resources, 247 Kan. 519, 527 (1990). In determining legislative intent, courts are not limited to a mere consideration of the language employed but may properly look to historical background of the enactment, the circumstances attending and

subsequent to its passage, the purposes to be accomplished and the effect the statute may have under the various constructions suggested. Joe Self Chevrolet v. Board of County Commissioners of Sedgwick County, 247 Kan. 625, 633 (1990).

As initially proposed, 1987 Senate Bill No. 78 required those individuals representing themselves as being professional counselors to be licensed by the behavioral sciences regulatory board. Minutes, Senate Committee on Public Health and Welfare (January 22, 1987). The bill also stated that the proposed act was inapplicable:

"[T]o the activities and services of a rabbi, priest, minister or clergy person of any religious denomination or sect, so long as such activities and services are within the scope of the performance of such individual's regular or specialized ministerial duties and for which no separate charge is made, or when such activities are performed, with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally recognizable church, denomination or sect and when the individual rendering service remains accountable to the established authority thereof." Id. (Emphasis added.)

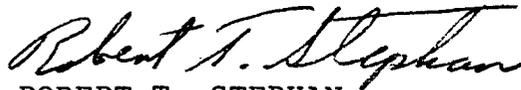
Before 1987 Senate Bill No. 78 was passed out of committee, the provision emphasized above was deleted and the licensure requirement was modified so as to require registration with the behavioral sciences regulatory board of those individuals seeking to use the titles of registered professional counselor, registered counselor, or professional counselor. It was recognized that such modification would not prohibit the practice of counseling by individuals who have not met the qualifications set forth in K.S.A. 1990 Supp. 65-5804. Minutes, House Committee on Public Health and Welfare, (March 26, 1987).

It is clear that the activities and services of a rabbi, priest, minister, or clergy person are exempt from application of the professional counselors registration act. Unlike K.S.A. 1990 Supp. 65-6301 et seq. (social workers), K.S.A. 1990 Supp. 74-5301 et seq. (psychologists), and K.S.A.

1990 Supp. 74-5361 et seq. (masters level psychologists), the professional counselors registration act merely requires registration prior to use of the titles of registered professional counselor, registered counselor, or professional counselor, and does not prohibit individuals who are not registered from engaging in providing counseling services. A rabbi, priest, minister, or clergy person who is not registered with the behavioral sciences regulatory board may accept compensation for counseling services provided by the rabbi, priest, minister, or clergy person.

Provided the activities or services of a rabbi, priest, minister, or clergy person are within the scope of the performance of such individual's regular or specialized ministerial duties, such individual need not be registered by the behavioral sciences regulatory board. The crime victims compensation board, therefore, may accept as an allowance expense payable by the board a statement for counseling services provided by a rabbi, priest, minister, or clergy person who is not registered.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General