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ATTORNEY GENERAL OPINION NO. 92- 61

James L. Francisco, Chairman
Kansas Parole Board
Landon State Office Building
900 Jackson Street, 4th Floor
Room 452-S
Topeka, Kansas 66612-1220

Re: Criminal Procedure; Kansas Code of Criminal
Procedure--Release Procedures--Parole Eligibility;
Conditions of Release; Additional Programs

State Departments; Public Officers and
Employees--Department of Corrections; Secretary of
Corrections--Program Agreements Between Secretary
and Inmate; Completion of Certain Programs to be
Prepared for Release on Parole; Authority of Kansas
Parole Board

Synopsis: The secretary of corrections is the official
authorized to designate the programs which an
inmate must participate in and successfully
complete in order to be prepared for release on
parole. The parole board may not require the
inmate to participate in programs which have not
been set forth in the agreement entered into
pursuant to K.S.A. 1991 Supp. 75-5210a by the
secretary of corrections and an inmate. Cited
herein: K.S.A. 1991 Supp. 22-3717; 75-5210;
75-5210a; L. 1988, ch. 115, §§ 1, 6.

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Dear Mr. Francisco:

As chairman of the Kansas parole board, you request our opinion regarding whether the department of corrections may include within an agreement entered into pursuant to K.S.A. 1991 Supp. 75-5210a a requirement that the inmate participate in a pre-release program or work release program.

K.S.A. 1991 Supp. 75-5210a obligates the secretary of corrections to enter into written agreements with inmates specifying the educational, vocational, mental health or other programs which the secretary of corrections determines the inmate must satisfactorily complete in order to be prepared for release on parole. The agreements are to be entered into within a reasonable time after the inmate is committed to the custody of the secretary of corrections. K.S.A. 1991 Supp. 75-5210a. "If the secretary determines that the inmate's conduct, employment, attitude or needs require modifications or additions to those programs which are set forth in the agreement, the secretary shall revise the requirements." Id. As part of the agreement, the secretary of corrections agrees to report to the parole board the fact that the inmate has satisfactorily completed the programs required by the agreement. Id. If the inmate becomes eligible for parole before satisfactorily completing the programs required by the agreement, the secretary of corrections is obligated to report to the parole board the programs which the inmate must yet satisfactorily complete. Id.

The interpretation of a statute is a matter of law and it is the function of the court to interpret a statute to give it the effect intended by the legislature. Brabander v. Western Cooperative Electric, 248 Kan. 914, 917 (1991). 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. Id. at 916. In construing statutes, the legislative intent must be determined from a general consideration of the entire act. State ex rel. Stephan v. Kansas Racing Commission, 246 Kan. 708, 719 (1990). If possible, effect must be given to all provisions of the act, and different provisions must be reconciled in a way that makes them consistent, harmonious, and sensible. Id. In determining legislative intent, the court is not limited to a mere consideration of the language employed but may properly look into 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. Workers

Compensation Fund v. Silicon Distributing, Inc., 248 Kan. 551, 556 (1991). When a statute is plain and unambiguous, the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. State v. Coley, 236 Kan. 672, 675 (1985).

The secretary of corrections is authorized under subsection (a) of K.S.A. 1991 Supp. 75-5210 to:

"[E]stablish programs of classification and diagnosis, education, casework, mental health, counseling and psychotherapy, chemical dependency counseling and treatment, sexual offender counseling, prerelease programs which emphasize re-entry skills, adjustment counseling and job placement, vocational training and guidance, work, library, physical education and other rehabilitation and recreation services; the secretary may establish facilities for religious worship; and the secretary shall institute procedures for the study and classification of inmates." (Emphasis added.)

K.S.A. 1991 Supp. 75-5210 provides a partial list of the programs which are the subject of the agreements entered into pursuant to K.S.A. 1991 Supp. 75-5210a. It is clear from the terms of K.S.A. 1991 Supp. 75-5210a that the secretary of corrections is the official authorized to determine whether an inmate must participate in and satisfactorily complete programs, and the secretary of corrections is authorized to enter into agreements with inmates outlining such participation. Satisfactory completion by the inmate of the programs required by the agreement entered into pursuant to K.S.A. 1991 Supp. 75-5210a is one of the factors to be considered by the parole board in determining whether to grant parole to an inmate. K.S.A. 1991 Supp. 22-3717(f).

"If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the [parole] board shall notify the inmate in writing of the specific programs the inmate must satisfactorily

complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in detail the specific reasons for not granting the parole." K.S.A. 1991 Supp. 22-3717(h) (emphasis added).

This provision was enacted by the same bill as the original version of K.S.A. 1991 Supp. 75-5210a was enacted. See L. 1988, ch. 115, §§ 1, 6. From this provision, it is clear that the parole board is excluded from making program recommendations. Minutes, Senate Committee on Judiciary, Attachment II, April 5, 1988. The secretary of corrections is the official authorized to designate the programs which an inmate must participate in and successfully complete in order to be prepared for release on parole. The parole board may not require the inmate to participate in programs which have not been set forth in the agreement entered into pursuant to K.S.A. 1991 Supp. 75-5210a by the secretary of corrections and an inmate.

Very truly yours,


ROBERT T. STEPHAN
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Richard D. Smith
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