Approved 3-26-85
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Senator Roy M. Ehrlich at
Chairperson

10:00 a.m./p.m. on March 11, 1985 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Conferees appearing before the committee:
Others attending: See attached list

Minutes for March 4, 5, 6, 7 and 8 were presented for approval, correction or rejection. Senator Morris moved the minutes be approved and Senator Mulich seconded the motion and the motion carried.

SB-326 - eliminating statutory references to certificate of need for health facilities.

Senator Francisco made the motion to pass out SB-326 favorably. Senator Morris seconded the motion and the motion carried. SB-326 was passed out favorably.

SB-309 - creating the county health capitol outlay fund

Senator Francisco made the motion to report SB-309 favorably with a second by Senator Mulich. The motion carried and SB-309 was passed out favorably.

SB-238 - establishing a demonstration program to determine the feasibility and effectiveness for the care of trauma injured persons

Staff stated that if worked this bill needed to be amended by striking the word "establishing" on line 18 and inserting the word "providing" and striking the word "established" on line 73 and inserting the word "provided".

Senator Francisco moved that the bill be passed as amended by staff. The motion was seconded by Senator Reilly and the motion carried. Senator Mulich moved that SB-238 be passed out favorably as amended and the motion was seconded by Senator Anderson. Division was called for showing a 5-5 vote. The chair cast a yea vote and the bill passed out favorably with a 6-5 vote.

A subcommittee report on SB-142 was made by Senator Walker. Senator Walker reported that the concensus of the subcommittee was that SB-142 be recommended to be tabled due to the "broad" area covered and that it be referred to an interium study committee. It was moved by Senator Walker to table the bill. Senator Mulich seconded the motion. A substitute motion to leave SB-142 in the book and recommend it to the co-ordinating council for interium study was made by Senator Walker and seconded by Senator Mulich. The motion carried. Committee members were urged to individually write the council to urge study of this bill. Attachment I

SB-275 - relating to dental hygenists; concerning the practice thereof; requiring training in cardiopulmonary resuscitation

Senator Morris moved that SB-275 be tabled. There was no second to the motion. Senator Francisco moved that SB-275 be passed out favorably and the motion was seconded by Senator Anderson.

Senator Reilly offered a substitute motion to take no action on SB-275. Senator Hayden seconded the motion. Divison was called for and the vote was 4-4 and the chair voted to make the vote 5-4. The motion carried.

Senator Anderson offered a substitute bill in place of SB-130. A motion by

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 526-S, Statehouse, at 10:00 a.m./p.m. on March 11, 1985.

Senator Anderson that the language shown in Attachment II replace SB-130. Senator Mulich seconded the motion. Discussion followed concerning the Attorney General's opinion, Attachment III, and whether or not this bill was necessary. The chairman called the question and division was called for. The vote was 5-5 with the chairman voting yes making the vote 6-5. The motion carried.

Senator Francisco moved that the substitute SB-130 be passed out favorably. Senator Mulich seconded the motion. Division was called for with a 5-4 vote. The motion carried and the bill was passed out favorably.

Meeting adjourned.

SENATE

PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 3-11-85

| (PLEASE PRINT) NAME AND ADDRESS | ORGANIZATION |
|---|---|
| Dan Morgan | AGC of Kansas |
| Marilyn Bradt | KINH |
| Dick Hummel | KHCA |
| GARY ROBBINS | KOA ~~Financial Director~~ |
| John Grace | KAHPA |
| Grace Mott | Sen Walker Office |
| John Nitterson | Charter Medical |
| D.J. SABOL | KDHE |
| Barbara Reinert | Planned Parenthood of KS. |
| Ward Myers | HSAKEK |
| Denny Burgess | Charter Medical |
| Robert Harder | SRS |
| Linda Carol Woodley | Nat'l Organization for Women |
| Elizabeth E. Taylor | Ks Dental Hygienists Assn |
| JERRY SLOUGHTER | KS MEDICAL SOCIETY |
| Tom Bell | Ks. Hosp. Assn |
| Yvonne Ulrich | Self |
| Lynelle King | K St. Nurses Assn |

March 7, 1985

The sub-committee of the Public Health and Welfare Committee composed of Senators Reilly, Francisco and Walker was appointed to study and hold additional hearings on Senate Bill 142 - Safety Requirements for public swimming pools - met at 3 p.m. in room 531-N on Monday, March 4th. Emaleen Correll of the Legislative Research Staff was also present.

The hearings were focused primarily on opponents to SB 142 since hearings had previously been held when the proponents were heard.

Testimony was heard from the following:

Mr. D. Burgess with APFC
Mr. Wm. Curtis - Kansas Association of School Boards
Mrs. Kim Praskovich - Girl Scouts of America
Mr. Kevin Tucker - Salina YMCA

Much of the testimony appeared to be not in opposition to the general principle embodied in SB 142 but concerns to certain parts of the bill, such as definitions, interpretation, etc.

Following testimony, there was considerable open discussion of SB 142 by the sub-committee members, legislative staff persons, as well as several of the individuals in the room.

In summary, it was the concensus of the sub-committee that:

1. The broad area of swimming pools, whirlpools, hot tubs, spas, etc., appeared to be the area to which the State had given little or no attention. Much of the regulation appears to be a local matter and is reasonably good in some areas - but virtually non-existent in others.

2. It seemedreasonable that the State should examine the "broad" area of safety, sanitation, education involving "pools".

3. Senate Bill 142 in its present form was poorly written - vague - with many questions about interpretation and definitions.

4. This "broad" area was growing in complexity and deserving of attention at the legislative level.

SUMMARY: The sub-committee recommends that SB 142 be tabled due to this "broad" area and be referred to an interim study committee. Due to the vagueness of interpretation of definitions and intent and that Senate Bill 142 be referred to an Interim Study to consider the "broad" areas pertinent to "pools".

Jack Walker
Senator

3/11/85
Attachment I

SUBSTITUTE FOR SENATE BILL 130

Section 1. "Secretary" means the Secretary of Social and Rehabilitation Services.

Section 2. A child born as a result of an attempted abortion who exhibits any sign of a live birth as defined in K.S.A. 65-2401 shall be considered a child in need of care under the Kansas Code for Care of Children.

Section 3. The Secretary shall adopt rules and regulations to carry out the provisions of this act.

Section 4. This act shall take effect on publication in the Kansas Register.

3/1/85
Attachment II

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751

February 27, 1985

ATTORNEY GENERAL OPINION NO. 85- 26

Peter Rinn
Chief Counsel
Kansas Department of Social and
Rehabilitation Services
State Office Building, 6th Floor
Topeka, Kansas 66612

Re: Infants -- Kansas Code for Care of Children -- Filing of Petition on Referral by SRS or Other Person; Filing by Individual -- Authority of SRS to File Child in Need of Care Petitions

Synopsis: The Kansas Code for Care of Children allows an individual to initiate a petition alleging a child is in need of care, and provides that said individual may retain legal counsel to present the case to a court of competent jurisdiction. The Secretary of SRS or his representative, as an individual, may file such a petition and use the agency legal staff to present the case. Such authority fulfills the federal statutory mandates. The definition of abused and neglected child as set out in the code substantially complies with the parameters of federal law. Cited herein: K.S.A. 1984 Supp. 38-1501; 38-1503; 38-1510; 38-1529; K.S.A. 77-201 Second, Thirteenth; 42 U.S.C.A. §5101, §5102, §5103, as amended by P.L. 98-457.

* * *

3/11/85
Attachment III

Dear Mr. Rinn:

As chief counsel to the Kansas Department of Social and Rehabilitation Services (SRS), you request our opinion whether certain provisions of the Kansas Code for Care of Children (the code) (K.S.A. 1984 Supp. 38-1501 et seq.), conform with the provisions of the Child Abuse Prevention and Treatment Act (42 U.S.C.A. §1501 et seq.). You specifically inquire as to the authority of SRS to initiate child in need of care petitions pursuant to the code and the adequacy of the code's definition of child abuse and neglect.

The first question submitted concerns whether current provisions of the code, as contained in K.S.A. 1984 Supp. 38-1501 et seq., allow the agency to enforce the provisions of the code by the initiation of a petition. 42 U.S.C.A. §5103 was amended in 1984 by the Child Abuse Amendments of 1984, Public Law 98-457, (commonly referred to as the Baby Doe Amendments), with the addition of subsection (k). As amended, that statute reads in pertinent part as follows:

> "(b)(1) The Secretary [of Health and Human Services], through the Center [National Center on Child Abuse and Neglect] is authorized to make grants to the States for the purpose of assisting the States in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.
>
> "(2) In order for a State to qualify for assistance under this subsection, such State shall--
>
> . . . .
>
> "(k) within one year after the date of the enactment of the Child Abuse Amendments of 1984, have in place for the purpose of responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the State child protection services system), to provide for . . . (iii) authority, under State law, for the State child protection service system to pursue any legal remedies, including the authority to initiate legal

> proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions." (Emphasis added.)

You ask whether, in light of the provisions contained in K.S.A. 1984 Supp. 38-1510, the agency can initiate legal proceedings under K.S.A. 1984 Supp. 38-1529 and therefore be in compliance with 42 U.S.C.A. §5103 as amended. K.S.A. 1984 Supp. 38-1510 states:

> "It shall be the duty of the county or district attorney to prepare and file the petition alleging a child to be a child in need of care and to appear at the hearing on the petition and to present evidence that will aid the court in making an appropriate adjudication at the conclusion of the hearing." (Emphasis added.)

K.S.A. 1984 Supp. 38-1529 reads:

> "(a) Whenever the state department of social and rehabilitation services or any other person refers a case to the county or district attorney for the purpose of filing a petition alleging that a child is a child in need of care, the county or district attorney shall review the facts and recommendations of the department and any other evidence available and make a determination whether or not the circumstances warrant the filing of the petition.
>
> "(b) Any individual may file a petition alleging a child is a child in need of care and the individual may be represented by the individual's own attorney in the presentation of the case. (Emphasis added.)

In arriving at an answer to your question, it is first necessary to determine the intent of the legislation as to who may file petitions under this code and the meaning of the term "individual." Initially, it would appear that K.S.A. 1984 Supp. 38-1510 and 38-1529 are in conflict with one another. Therefore, the legislative history should be examined. Southeast Kansas Landowners Ass'n v. Kansas Turnpike Authority, 224 Kan. 357

(1978). In reviewing the comments made by the Kansas Judicial Council in the re-write of the code in 1981, we find that the above-named statutes reincorporated K.S.A. 1980 Supp. 38-815c and 38-816 (repealed, L. 1982, ch. 182). These earlier provisions placed a duty on the county and district attorneys to present a prefiling determination to the court, which then decided whether to procede. The new code provisions leave that determination to the prosecutor. The 1981 Judicial Council Bulletin Comments state:

> "This section replaces K.S.A. 1980 Supp. 38-816 and removes the court from the making of prefiling determinations, except in limited circumstances covered in subsection (c) of this section. This is consistent with the policy of the Committee to maintain the impartiality of the court.
>
> "Subsection (a) places the duty of determining whether or not a petition should be filed with the county or district attorney.
>
> "Subsection (b) provides for the possibility of an individual filing a petition and proceeding with retained counsel.
>
> "Subsection (c) deals with the contingency of an individual filing the petition, but requesting the county or district attorney to present the case." (Emphasis added.) Comments to Section 1529, Judicial Council Bulletin, p. 29, 30, June, 1981.

Although the final version is somewhat different from the proposed language, it is apparent that the intent of K.S.A. 38-1529, as well as 38-1510, was to remove the need for a court to make a pre-filing determination. See Comments, supra, p. 17.

A general rule of statutory construction is that all the provisions in an act must be read in pari materia [Claflin v. Walsh, 212 Kan. 1 (1973)], and, if possible, construed to be consistent. Capital Services, Inc. v. Dahlinger Pontiac-Cadillac, 232 Kan. 419 (1983). As it would be inconsistent to give an individual an opportunity to file a petition, then limit enforcement only to county and district attorneys, we can only conclude that the intent of the drafters was to place an affirmative duty on county and district attorneys to review and prosecute child abuse violations, not to make

enforcement an exclusive function of prosecutors only. For further support, see In re Hamlett, 2 Kan.App.2nd 642 (1978). Further, we note that code violations are civil, not criminal, in nature. K.S.A. 1984 Supp. 38-1501.

As it is our opinion that an "individual" has the authority to initiate petitions for enforcement of the code under K.S.A. 1984 Supp. 38-1529(b), we must now determine whether SRS would be able to do so. Another rule of statutory construction is that words be given their ordinary and usual meaning. K.S.A. 77-221 Second, "Individual" is defined: "as a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation or association . . . ." Black's Law Dictionary Revised Fourth Edition, p. 913 (1968). Based upon the use of the word "individual," as opposed to "person," which is defined to include corporations (K.S.A. 77-201, Thirteenth), we must conclude that the drafters meant one human being. Accordingly, as an agency SRS could not file an action under K.S.A. 1984 Supp. 38-1529(b).

However, this result is not dispositive of the question, for the federal statute in question only requires that the agency be able to enforce the code provisions. We have been able to find no language that would prohibit an individual, connected with the agency, such as Dr. Harder or a case worker, from initiating an action. Therefore, since the secretary or his designated representative, could bring an action as an individual, the agency would be able to enforce the code and thereby be in compliance with 42 U.S.C.A. §5103(k).

Your second question concerns Kansas statutory definition of child abuse and neglect and its similarity to federal law. 42 U.S.C.A. §5102 defines child abuse and neglect as follows:

> "The physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen, or the age specified by the child protection laws of the State in question, by a person who is responsible for the child's health or welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary."

K.S.A. 1984 Supp. 38-1503(b) defines "physical mental or emotional abuse or neglect" as:

> "The infliction of physical, mental or emotional injury or the causing of a deterioration of a child and may include, but shall not be limited to, failing to maintain reasonable care and treatment, negligent treatment or maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered."

Although the definitions and terminology are different between the two statutes, we feel that there is sufficient similarity in the two to include the same types of situations. For example, both statutes speak to both physical and mental injury, negligent treatment, maltreatment and exploitation. Also, it is enough that the child's health or well-being is endangered or threatened, without actual harm having to be shown. In light of these similarities, we have little hesitancy in concluding that the parameters of K.S.A. 1984 Supp. 38-1503 fit within the guidelines of 42 U.S.C.A. §5102.

In conclusion, we are of the opinion that the Kansas Code for Care of Children allows an "individual" to initiate a petition alleging a child is a child in need of care, and provides that said individual may retain legal counsel to present the case to a court of competent jurisdiction. The Secretary of SRS or his representative, as an individual, may file such a petition and use the agency's legal staff to present the case. Such authority fulfills the federal statutory mandates. In addition, the definition of abused and neglected child as set out in the code substantially complies with the parameters of the federal law.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Matthew W. Boddington

Matthew W. Boddington
Assistant Attorney General

RTS:JSS:MWB:crw