



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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April 12, 2004

The Honorable Bonnie J. Huy
State Representative, 87th District
State Capitol, Room 110-S
Topeka, Kansas 66612

Re: Crimes and Punishment--Kansas Criminal Code--Prohibited Conduct--Crimes Involving Violations of Personal Rights; Eavesdropping; Breach of Privacy; Legality of Surreptitiously Tape Recording Conversation by Party

Dear Representative Huy:

You inquire, on behalf of constituents, regarding the legal propriety of a parent, grandparent, or foster parent surreptitiously tape recording conversations with representatives of the Kansas Department of Social and Rehabilitation Services (SRS) and its foster care contractors.

While there are state and federal laws that prohibit wiretapping and eavesdropping,¹ those prohibitions are not triggered by the taping of a conversation by one party, even though the recording was done without the knowledge of the other parties to the conversation.²

Finally, my understanding is that Roberta Sue McKenna, the Assistant Director for Child Welfare, has provided to you³ a copy of a memo dated March 16, 2004, that concludes that there is "no law, regulation or policy [of SRS] which would prohibit the use of recording equipment" in case planning conferences.⁴

¹K.S.A. 2003 Supp. 21-4001; K.S.A. 21-4002; 18 U.S.C. § 2511.

²*Holmes v. Finney*, 631 F.2d 150 (10th Cir. 1980) (no violation of constitutional or statutory rights by taping of a conversation by a party, even if recording was done surreptitiously); *In re High Fructose Corn Syrup Antitrust Litigation*, 46 F.Supp.2d 819 (C.D. Illinois 1999) (tape recordings of private conversations by one of the parties to the conversation are not "oral communications" for purposes of federal statutory prohibition regarding intercepting "any wire, oral, or electronic communication.") See Attorney General Opinion Nos. 93-93, 78-381.

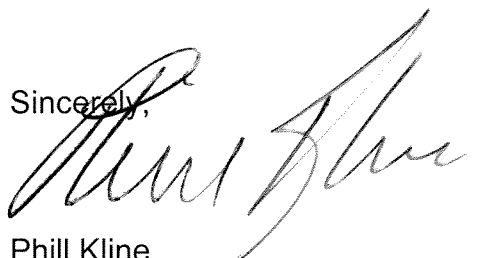
³Letter to Representative Bonnie J. Huy from Roberta Sue McKenna dated March 20, 2004.

⁴Memorandum to Area and Regional CFS Chiefs from Sandra Hazlett, CFS Director.

Representative Bonnie Huy
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I hope this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Phill Kline". The signature is written in a cursive style with a large, sweeping initial "P".

Phill Kline
Attorney General

PK:MF:jm