



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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September 30, 1975

OPINION LETTER NO. 202

Honorable Kenneth J. Rothman
State Representative, District 77
Room 309, State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Rothman:

This is in response to your request for an official opinion on the following question:

"Whether Section 11 of HB 578 passed by the General Assembly during the 1975 legislative session is broad enough to cover a child who is involved in the proceedings as required by the Federal Child Abuse Act of Public Law 93-247."

The pertinent portion of Section 11 of HB 578 reads as follows:

"In every case involving an abused or neglected child which results in a judicial proceeding the judge shall appoint a guardian ad litem to appear for and represent a) a child who is the subject of proceedings under this act, . . ."

The Federal Child Abuse Act, Public Law 93-247, is now codified at 42 U.S.C., Section 5101, et seq. Section 42 U.S.C., Section 5103(b)(2)(g) provides that in order for states to be eligible for federal funds they must ". . . provide that in every case involving an abused and neglected child which results in a judicial proceeding a guardian ad litem shall be appointed to represent the child in such proceedings; . . ." We understand

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that your request has been prompted by an inquiry from the Department of Health, Education and Welfare, as to whether the Missouri statute meets the federal requirement. The only material difference between the two sections is between the phrase "such proceedings" appearing in the federal statute and the phrase "proceedings under this act" appearing in HB 578. We view the thrust of the inquiry then as whether there can be judicial proceedings involving child abuse and neglect without the child being the subject of proceedings under HB 578.

The determination of this question turns upon the definition of the term "proceedings". The Missouri Supreme Court has provided the following definition.

"A 'proceeding' in a civil action is an act necessary to be done in order to attain a given end. It is a prescribed mode of action for carrying into effect a legal right, . . ." City of St. Louis v. Cooper Carriage Woodwork Co., 216 S.W. 944, 948 (Mo. 1919).

While this definition speaks only of a proceeding in a civil action, we recognize that the term "proceeding" has applicability to administrative matters. However, it is our belief that the basics of the definition remain the same. In Friel v. Alewel, 298 S.W. 762 (Mo. 1927), the court dealt with the phrase "proceeding under power of sale to foreclose a mortgage or deed of trust." The court defined proceeding as ". . . a course of action or procedure, resulting in competent, orderly, and continuous steps of procedure until the power of sale has been fully exercised in accordance with the statutes appertaining thereto." Id. at 764. Combining these two definitions we believe that one arrives at that definition formulated by the Supreme Court of Maine in Kennie v. City of Westbrook, 254 A.2d 39, 43 (Me. 1969), in which it was held that proceeding is a comprehensive term which generally means a proscribed course of action for enforcing legal rights and remedies. Thus, we feel that the term proceeding implies, 1) a degree of formality in the procedural steps, 2) the purpose of enforcing legal rights or remedies, and 3) that these procedural steps should lead to the accomplishment of some definite end.

Examining HB 578 in light of this definition we reach the conclusion that there are no proceedings under HB 578. HB 578 does not create any legal rights, does not create any remedies and does not provide for the Division of Family Services to reach any ultimate decision. HB 578 only imposes a duty on specified individuals to report suspected cases of child abuse

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or neglect. It further requires the Division of Family Services to investigate these reports and in turn report to the juvenile officer and law enforcement officials. Other provisions of HB 578 merely relate to the execution of these two primary purposes. It is our opinion that neither the reporting nor investigative activities can be deemed "proceedings".

Thus, we have a situation in which the language of Section 11 is contradictory of the earlier provisions of HB 578, in that the preceding sections make absolutely no provision for any sort of proceedings. Under these circumstances we feel it is appropriate to apply the rule announced in City of Joplin v. Joplin Waterworks Company, 386 S.W.2d 369 (Mo. 1965).

" . . . Acting on the presumption that the legislature never intends to enact an absurd law, incapable of being enforced, and on the principle that the reason of the law should prevail over the letter of the law, courts on numerous occasions, confronted with ambiguous or contradictory language, have adopted a construction which modifies the literal meaning of the words, or in extreme cases have stricken out words or clauses regarded as improvidently inserted, in order to make all sections of a law harmonize with the plain intent or apparent purpose of the legislature." Id. at 373-374.

Application of this rule results in the phrase "under this act" being mere surplusage. Deleting this phrase from Section 11 results in that section now requiring that in all judicial proceedings involving child abuse the court must appoint a guardian ad litem for a child who is the subject of proceedings. When read in this manner, we believe that Section 11 now meets the requirements imposed by the federal legislation.

We recognize that it cannot be presumed that the legislature intended to use superfluous or meaningless words in the statute. Welborn v. Southern Equipment Company, 386 S.W.2d 432 (St.L.Ct. App. 1964). We do not, however, adopt the above interpretation lightly but rather feel that due to compelling reasons this is an "extreme" case and that this interpretation is necessary to harmonize with the plain intent and purpose of the legislature. See City of Joplin v. Joplin Waterworks Company, supra.

The primary purpose of the statutory construction is to ascertain and to effectuate legislative intent. Missouri Pacific

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Railroad Company v. Kuehle, 482 S.W.2d 505 (Mo. 1972); State ex rel. Cooper v. Cloyd, 461 S.W.2d 833 (Mo. Banc 1971). We believe that the intent of HB 578 is clearly and unequivocally expressed by the emergency clause contained in Section A:

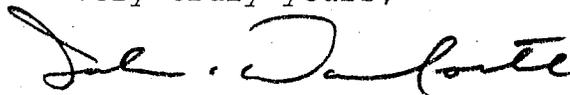
"Because immediate action is necessary in order to prevent certain federal funds from being cut off from payment to the State of Missouri and because there are available other federal funds if this act is passed, this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the Constitution, and this act shall be in full force and effect upon its passage and approval."

Therefore, the legislature clearly contemplated that passage of HB 578 would render the State of Missouri eligible for federal funds. To be eligible, Missouri law must be in compliance with the federal statute, i.e., must provide for the appointment of a guardian ad litem in all judicial proceedings involving child abuse. The emergency clause of HB 578 is a clear demonstration that the legislature intended to meet this federal requirement in Section 11.

Further, examination of the term "proceedings" in context compels the same result. The term is used in previous sections of HB 578. See Sections 4.2, 6, 7 and 9.1. An examination of the use of the term in these sections reveal that the legislature did indeed use the term in the sense of a formalized decision-making process regarding legal rights.

It is our opinion, therefore, that the proper construction of HB 578 is that it requires the appointment of a guardian ad litem for the child in every judicial proceeding involving an abused or neglected child.

Very truly yours,



JOHN C. DANFORTH
Attorney General