



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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July 8, 2019

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VIA HAND DELIVERY

Governor Laura Kelly
Statehouse, 2nd Floor
300 SW 10th Ave.
Topeka, KS 66612

**Re: DCF Action Relaxing Welfare Work Requirements for Able-Bodied Adults
Without Dependents**

Dear Governor Kelly:

I write to request that you review a decision by your Department for Children and Families (“DCF”) that extends publicly funded food assistance for able bodied adults without dependents who are able to work or participate in a federally approved work program or its equivalent (“ABAWDs” or “able-bodied adults”). This decision was made through DCF adoption of EES Policy Memo 19-05-04 on May 17, 2019 (the “Policy Memo”).

On June 25, I requested DCF’s legal analysis of how the Policy Memo complies with state law. In response to my inquiry, DCF on June 28 informed me that the Policy Memo “was not presented to the Governor” before it was adopted. Therefore, the purpose of this letter is to advise you of the situation and to request that you promptly review the Policy Memo and its conflict with the purpose and requirements of state law.

The pertinent facts are these: In 2015, the Legislature adopted, and the Governor signed into law, S. Sub. for H.B. 2258, which enacted the HOPE Act in Kansas. The legislation contained the following provision, codified at K.S.A. § 39-709(b)(17)(A):

The secretary for children and families is **prohibited** from requesting or implementing a waiver or program from the U.S. department of agriculture for the time limited assistance provisions for able-bodied adults aged 18 through 49 without dependents in a household under the food assistance program. The time on food assistance for able-bodied adults aged 18 through 49 without dependents in the household **shall be limited** to three months in a 36-month period if such adults are not meeting the requirements imposed by the U.S.

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department of agriculture that they must work for at least 20 hours per week or participate in a federally approved work program or its equivalent. (emphasis added).

Your longstanding opposition to the public policy enacted through this provision is well known. As a member of the Kansas Senate, you led an effort during floor debate to strike this provision from the bill. *See* Journal of the Kansas Senate for April 1, 2015, at 447. But a majority of the Senate disagreed with your proposed amendment and instead favored this provision. It ultimately became law over your objection.

At the time it announced the policy, DCF failed even to acknowledge the state law statutory prohibition, much less explain how the policy complies with it. In response to my later inquiry, DCF lawyers now argue that the precise language of the prohibition is either inapplicable or meaningless and that, in any event, the DCF Secretary has separate, generic statutory authority – on the books since 1973 – to dispense food assistance as she pleases once she has received “food stamps” from the federal government.

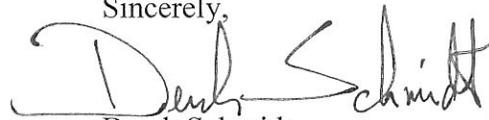
But the specific Kansas public policy in the 2015 HOPE Act, enacted by the Legislature and signed into law by the Governor, is clear: able bodied adults without children or other dependents who are capable of working should do so, and not be provided extended publicly funded food assistance if they are not working. The DCF legal arguments, to the extent they are persuasive at all, at most amount to a declaration that DCF lawyers think they have discovered a legal loophole that allows the agency to evade the clear public policy reflected in state law. That is not how our system of self-government is supposed to work.

Of course, as Governor you are free to propose changes to state law and to work to persuade the legislature to replace the statutory prohibition with public policy you prefer. So, too, is the Secretary for Children and Families. But unless and until changed, we must give effect to the law that currently is on the books. For all of these reasons, I respectfully request you review the policy adopted by your agency and have it withdrawn as in conflict with either the letter of state law, its spirit, or both.

Please be advised that in the event I do not receive confirmation that the policy is withdrawn by Friday, July 12, I am prepared to seek a judicial determination whether the policy violates state law. If you decide the policy should persist, it seems to me all involved deserve a clear and authoritative determination of whether DCF really has found a legal loophole that relieves it of the plain purpose of state law.

If you have any questions, please let me know. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Derek Schmidt". The signature is written in a cursive style with a large, stylized "D" and "S".

Derek Schmidt

Kansas Attorney General