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Office of the Attorney General

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VERN MILLER
Attorney General

March 5, 1974

Opinion No. 74- 76

Mr. Alvin Bauman
Nemaha County Clerk
Nemaha County Courthouse
Seneca, Kansas 66538

Dear Mr. Bauman:

You inquire whether voter registration records are open to public inspection under K.S.A. 45-206, or whether access to these records is limited to that allowed under K.S.A. 25-2530.

K.S.A. 45-201, of the Kansas public records act, first enacted in 1957, provides in pertinent part thus:

"All official public records of the state, [and] counties . . . which records by law are required to be kept and maintained, except those . . . records specifically closed by law or by directive authorized by law, shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen."

In 1962, Attorney General William Ferguson was presented the question whether voter registration records were subject to the foregoing, or alternatively, to then Kan. G.S. 1961 Supp. 12-906, now found at K.S.A. 25-2320, which states thus:

"The chairman of any political organization or central committee may appoint, in writing, reputable persons, who shall have access to registration books at any time during regular business hours, under supervision of the county election officer, for the purpose of making copies of or examining registration records for the use of such political organization. Every person so appointed shall take an oath before the county election officer not to mutilate or in any

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manner change any registration record or part thereof or entry therein. County election officers shall provide a reasonable number of copies of registration records, not to exceed five (5), to the chairman of any political organization or central committee upon written request therefor by such chairman. The expense of making such copies shall be paid by the political organization or central committee." [Emphasis supplied.]

The underscored language was first enacted in 1901. See ch. 18, L. 1901. The language not underscored was added by amendment in 1961. See ch. 69, L. 1961.

Attorney General Ferguson took the view that the two provisions were in conflict with each other, and relied upon the general rule set out in Moody v. Edmondson, 176 Kan. 116, 120, 269 P.2d 462 (1954) thus:

"It has been repeatedly held that where there is a conflict between a statute dealing generally with a subject and another dealing with a certain phase of it, the specific legislation controls. See Cutrel v. Best, 169 Kan. 16, 271 P.2d 270 (1950), where it was said:

'It has been held repeatedly that while there is conflict between a statute dealing generally with a subject and another statute dealing specifically with a certain phase of it, this specific legislation controls (Harkrader v. Whitman, 142 Kan. 186, 46 P.2d 1 [1935]) and that where there is a repugnancy between a special statute and a general statute, the special statute will prevail (In re Estate of Park, 147 Kan. 142, 75 P.2d 842 [1938]; Smith v. Henry, 155 Kan. 283, 124 P.2d 448 [1942]'"

General Ferguson found the 1901 enactment to be "specific," the 1957 act "general," and concluded that the public was not entitled to inspect voter registration records.

That opinion errs in its initial premise that the two statutes deal with the same subject matter, and that one conflicts with the other. When the 1901 law was enacted, there was no general act authorizing members of the public to inspect public records. The 1901 Legislature did not enact any such authority, nor did it in terms forbid it. Ch. 181, L. 1901, established only the rights of political organizations, central committee chairman and their duly authorized representatives to "have access to such

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registration books at any time during business hours . . . for the purpose of making copies of or examining the same for the use of such political organization." The act is silent as to the right of members of the general public to inspect registration records. There was, thus, no statutory authority upon which a county clerk could rely either to grant or deny public access to the records, and each could presumably do as he or she chose. Attorney General Ferguson apparently views the enactment as impliedly forbidding all other access to such records than specifically authorized, relying upon the maxim expressio unius est exclusio alterius without saying so. In Johnson v. General Motors Corporation, 199 Kan. 720, 433 P.2d 585 (1967), the court stated thus:

"Generally, this maxim may be used in the interpretation and construction of statutes when the intention of the lawmaking body is not otherwise clear However, it is merely an auxiliary rule of statutory construction which is not conclusive; it should be applied only as a means of discovering legislative intent not otherwise manifest, and should never be permitted to defeat the plainly indicated purpose of the legislature. Accordingly the maxim is inapplicable if there is some special reason for mentioning one thing and none for mentioning another which is otherwise within the statute, so that the absence of any mention of such other will not exclude it." 199 Kan. at 722.

Certainly, the intention of the 1901 Legislature is not unclear. That act has no ambiguity which would occasion resort to auxiliary rules of statutory construction. Plainly, that legislature chose to ensure the right of enumerated political officers to examine and copy registration records. Assuming, as it is reasonable to do, that the 1901 Legislature wished to accomplish precisely this, and not more, there was no need to deal more broadly with the rights of others, including those of the general public, to inspect registration records. There is thus in our view no basis for inferring from the 1901 enactment any legislative intent either to permit or to deny public access to such records.

However, even if such an inference might be drawn, there was after 1957 no basis whatever for it. K.S.A. 45-201 dealt broadly, but explicitly, to assure public access to all "official public records" except, with details not pertinent here, for "records specifically closed by law or by directive authorized by law." Voter registration records are nowhere specifically closed by law, nor is there any authority for a directive closing them.

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Accordingly, it is our opinion that access to voter registration records is governed by K.S.A. 45-201. The opinion of June 19, 1962, issued by Attorney General William Ferguson no longer represents the position of this office, and it is hereby withdrawn.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm

cc: Lavina McDonald
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