

FILE

Subject

Records

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Public
Procedure Criminal
Arrest-Warrants



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

October 10, 1974

Opinion No. 74- 336

Mr. John H. Taylor
County Attorney
Geary County Courthouse
Junction City, Kansas 66441

Dear Mr. Taylor:

This will acknowledge receipt of your opinion request of September 27, 1974. You ask whether K.S.A. 45-201 requires that complaints and affidavits in support of arrest warrants be made public prior to the execution of such warrants.

K.S.A. 45-201 provides, in pertinent part, as follows:

"All official public records of . . . counties . . . which records by law are required to be kept and maintained . . . 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."

This clear directive is modified by the following exception:

". . . except those . . . records specifically closed by law. . . ."

While records of the county court are "official public records" required by law to be kept and maintained, and, therefore, falling within the scope of K.S.A. 45-201, it appears that non-executed warrants and the complaints and affidavits in support thereof, fall within the class of those "records specifically closed by law." In this connection we note K.S.A. 1973 Supp. 21-3827 which provides as follows:

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"An unlawful disclosure of a warrant is revealing or making public in any way, not necessary for the execution of such warrant, the fact that a search warrant or warrant for arrest has been applied for or issued or the contents of the affidavit or testimony on which such warrant is based, prior to the execution thereof.


"An unlawful disclosure of a warrant is a class B misdemeanor."

The legislative intent behind K.S.A. 1973 Supp. 21-3827 is simply to prevent the unnecessary disclosure of information which could hinder law enforcement.

"The right of inspection does not extend to all public records or documents, for public policy demands that some of them, although of a public nature, must be kept secret and free from common inspection, such as . . . letters and dispatches and the detective police service, or otherwise relating to the apprehension, prosecution and detention of criminals." 66 Am.Jur.2d, Records and Recording Laws, § 27.

It is our opinion, therefore, that unexecuted arrest warrants, and the complaints and affidavits in support thereof, are "records specifically closed by law" by virtue of the provisions of K.S.A. 1973 Supp. 21-3827, and their disclosure and publication is clearly prohibited by such section.

Very truly yours,



VERN MILLER
Attorney General

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