STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

March 10, 1975

Opinion No. 75-107

Robert R. Raines
Secretary of Corrections
5th Floor, KPL Towers
818 Kansas Avenue
Topeka, Kansas

Dear Mr. Raines:

Your recent letter raises several questions concerning the scope and effect of the expungement statutes, K.S.A. 21-4616 and -4617, providing for the expungement of all records pertaining to an individual's prior conviction upon that person's satisfaction of certain prerequisites for application. Since a subsequent letter from the Ford County Attorney has also been received concerning this subject, additionally requesting an opinion on the similar provisions of K.S.A. 12-4514, this opinion will jointly address the questions posed.[1]

The respective statutes, after prescribing that certain criteria be met before expungement be granted by the Court, continue in almost identical fashion to state that after expungement, the individual:

> "shall thereafter be released from all penalties and disabilities resulting from the crime of which he has been convicted, and he shall in all respects be treated as not having been convicted, except that upon conviction of any subsequent crime such conviction may be considered as a prior conviction in determining the sentence to be imposed. The defendant shall be informed of this privilege when he is placed on probation or suspended sentence.

---

[1]The three statutes differ in at least one respect. K.S.A. 12-4514 and 21-4616 provide additionally for the annulment of the prior conviction while K.S.A. 21-4617 provides only for expungement of records. However, this difference does not affect the resolution of the questions addressed herein.

> In any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of crime has been annulled under this statute may state that he has never been convicted of such crime." (from K.S.A. 21-4616).

As an initial matter, it should be noted that the statutes obviously contemplate preservation of all records despite a successful application, since the information within must be forwarded to a sentencing court upon request for the purposes of applying the habitual criminal act. In gauging the effects of an expungement, it must be first determined if the statutes proscribe even intergovernmental disclosure of information within a file for legitimate law enforcement or other purposes.[2]

The statutes speak in compellingly clear terminology. After expungement has been granted, the individual shall be released from all penalties and disabilities resulting from the crime and he shall be treated as not having been convicted in all respects (emphasis supplied). The law, in effect, creates a clean slate and its far-reaching scope resembles in many ways the effect of a pardon granted by the executive authority. The straightforward inclusive language of the statutes leaves no room for inference that any information in the file may be disclosed, regardless of who is seeking the information. The statute provides only a single exception, authorizing disclosure to a sentencing court upon request. In accordance with well established principles of statutory construction, where a statute specifically states its exceptions, others will not be devised by inference.

Once an order of expungement has been granted, K.S.A. 21-4617 prohibits, in our opinion, disclosure not only of the record of conviction, but of the arrest leading to that conviction. Under subsection (b) thereof, expungement operates to release the person whose record is so expunged from "all penalties and disabilities" resulting from the crime of which he has been convicted. Under subsection (c), any person whose conviction of crime has been expunged may state that he has never been convicted of such crime in any application for employment, license or for other civil right or privilege. The intent and purpose of expungement authorized by K.S.A. 21-4617 extends beyond the restoration of civil rights,

---

[2]These statutes, of course, do not attempt to govern federal records, and therefore information transmitted by state agencies to agencies of the federal government prior to an expungement is not affected and remains the property of the federal government.

for that is granted by K.S.A. 22-3722. Expungement is designed to relieve a convicted offender who is granted such relief from the social and economic stigma resulting from the conviction and events leading thereto. The record of conviction which is expunged under this provision must be deemed to include the records of all steps in the criminal justice system leading to that conviction, including the arrest for the offense of which the individual was convicted. The statutory relief sought to be granted by this provision would have little substance if, after receiving an order of expungement, the individual must nonetheless disclose the fact of the arrest for the offense of which he was convicted, or indeed, the fact of any other proceeding, including the trial, leading to the conviction thus expunged. Regrettably, employers and many other members of society often fail to distinguish between arrest and conviction.[3]

In light of the compelling rehabilitative purposes of the statutes, and the familiar and applicable principle that remedial statutes should be liberally construed, K.S.A. 21-4617 and like statutes must be construed in order to effectuate their purposes. These reasons compel the conclusion that disclosure is forbidden not only of the fact of conviction, but of all proceedings and steps in the criminal justice system leading to that conviction, including the fact of arrest.

The next significant question that arises is whether a governmental agency such as the Department of Corrections, the Kansas Adult Authority, or other such agency or office, is prohibited from disclosing even the existence of an expunged file on an individual. Again, if an individual is to be treated in all respects as if he has never been convicted, it seems apparent that a public agency may not disclose the existence of such a file in its records. The statutory right would indeed be hollow, and the statutory purpose defeated, if upon inquiry a public agency would be allowed to mention the existence of such a file. Even this slight acknowledgement would have a damaging effect akin to that of an affirmative disclosure of the file's contents and would further permit surmise and innuendo to work additional injury to the individual.

Accordingly, it follows that just as the individual is permitted to deny the existence of his prior conviction, a public agency must affirmatively deny that an expunged record exists. Any lesser practice would render the law a nullity.

---

[3]Kansas law does not presently provide for expungement of arrest records which do not result in conviction. Hopefully, this subject will receive the future attention of the legislature.

Finally, inquiry is made whether the Department of Corrections or other agency should require the requesting court to send it a certified copy of the journal entry of conviction before such records may be released from its files for the purpose of sentencing. In short, the laws do not address the question of the proper procedure to be followed in releasing records. However, as a matter of sound policy, it would at least seem appropriate to require some type of written notification from the court lest inadvertent and improper disclosures be made. The exact procedure to be followed is left to the particular agency's discretion.

Respectfully submitted,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

CTS:en