



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 15, 1976

ATTORNEY GENERAL OPINION NO. 76-88

Mr. David W. Hughes
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Johnson County Courthouse
P. O. Box 728
Olathe, Kansas 66061

RE: (1) Cities of the First and Second Class -- Items Properly Sold at Police Auctions.

(2) Police Records -- Destruction of Certain Records Permissible, When.

SYNOPSIS: (1) The city may sell at public auction any personal property which is in the possession of any city department and remains unclaimed for a period of six (6) months, together with any unclaimed or confiscated property which is in the possession of the police department and remains unclaimed for a period of six (6) months, subject to a prohibition on the sale of contraband or weapons which may not be lawfully possessed or the unlawful disposal of firearms.

(2) Those police records which are required by law to be kept and maintained should not be destroyed. Likewise, records, documents or papers which because of their nature should be permanently preserved are to be maintained continuously. However, nothing prohibits the destruction after maintenance for a reasonable time of those records not required by law to be kept which obviously are of only temporary value.

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Dear Mr. Hughes:

You inquire first as to what items may be sold at a police auction. This question is answered for cities of the first and second class by K.S.A. 13-14a02 and 14-10a02 respectively. K.S.A. 13-14a02 provides in pertinent part:

"The governing body of all cities of the first class, maintaining an organized police department and a fire department, shall establish and maintain a separate pension fund for each department, which shall be set aside and used exclusively for the payment of pensions and disability benefits as authorized herein. For the purpose of creating and maintaining such pension funds, the governing body of cities of first class are hereby authorized and shall:

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3. Place into said funds the proceeds of all lost or stolen securities, money or personal property which shall remain unclaimed in possession of any department of the city for six months, together with the proceeds of all unclaimed or confiscated property of any nature which shall have been in custody of the police department for a period of six months, and the city is hereby authorized to sell at public auction such property and place it into said pension funds in equal shares"

K.S.A. 14-10a02 provides in pertinent part:

"The governing bodies of all cities of the second class, with a population of excess of six thousand (6,000) located in counties having a population of ten thousand (10,000) or more, maintaining an organized police and fire department, may establish and maintain a separate pension fund for each department, which shall be set aside and used exclusively for the payment of pensions and disability benefits as authorized herein. For the purpose of creating and maintaining such pension funds, the governing body of cities of the second class are hereby authorized and shall:

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(3) Place into said funds the proceeds of all lost or stolen securities, money or personal property which shall remain unclaimed in possession of any department of the city for six months, together with the proceeds of all unclaimed or confiscated property of any nature which shall have been in custody of the police department for a period of six months, and the city is hereby authorized to sell at public auction such property and place it into said pension funds in equal shares"

These statutes clearly give the city the power to sell almost any unclaimed or confiscated property coming into its possession. I feel that this broad grant of authority to sell is limited to property which is not contraband. That is, unlawful weapons, gambling devices, narcotics or other contraband may not be sold by the city at public auction. Also, the property which may be sold must be lawfully transferred. For example, weapons not in themselves unlawful, may not be sold to persons for whom the weapon's possession is proscribed.

Secondly, you ask how long police records must be kept. The destruction of specifically mentioned city records after a period stated is provided for in K.S.A. 12-120, to wit:

"The officials, officers, and employees of any city charged with the custody or having in their custody the following records, documents, or other papers may destroy the same after they have been on file for the period stated:

(1) Claims (and the purchase orders thereto attached) presented and allowed by the governing body of the city or the board, commission, department, bureau or officer authorized to allow such claims, fifteen (15) years.

(2) Warrants or warrant checks, whether originals or duplicates, that have been stamped or marked paid as provided by law, five (5) years.

(3) Duplicate of receipts or stubs of receipts issued, five (5) years.

(4) Duplicates of utility bills sent to customers, five (5) years.

(5) Bookkeeping or accounting records of utility customer's accounts, five (5) years, except that the period for the records of deposits to guarantee the payment of bills

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or the return of meters shall begin when the account is closed or the customer ceases to receive service.

(6) Duplicates or stubs of licenses issued for license fees or occupation taxes, five (5) years.

(7) Bonds of officials, officers, or employees, fifteen (15) years, the period to begin at the date of the termination of the term or employment.

(8) Insurance policies, five (5) years, the period beginning at expiration of the policy unless a rate case is pending.

(9) Canceled checks, five (5) years.

(10) Requisition and duplicate purchase orders, five (5) years.

(11) Bonds and coupons stamped paid or canceled and returned by the state fiscal agent, five (5) years, the period beginning at the date of maturity of the bond or coupon."

K.S.A. 12-121 attempts to categorize those records, papers and documents not specifically mentioned in 12-120; (1) records, documents and papers which in their nature should be preserved permanently and (2) records, documents or papers obviously of only temporary value. It is evident that in many instances it will be difficult to so categorize a particular record. The vagueness inherent in making determinations as to certain records has its virtue in that it allows interpretation in harmony with conditions prevailing in a given situation.

You have specifically referred to accident reports and traffic citations. It is my opinion that nothing prohibits the destruction of accident reports and traffic citations after maintenance for a reasonable period of time. Accident reports are not required by law to be kept by local police departments. The requirements of law enforcement officers with respect to accident reports are contained in K.S.A. 8-1611, it provides:

"(a) Every law enforcement officer who investigates a vehicle accident of which report must be made as required in this article, or who otherwise prepares a written report as a result of an investigation either at the time of and at the scene of the accident or thereafter by interviewing the participants or witnesses, shall forward a written report of such accident to the division within ten (10) days after investigation of the accident.

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(b) Such written reports required to be forwarded by law enforcement officers and the information contained therein shall not be privileged or held confidential.

(c) The provisions of this section shall be deemed to be satisfied by the submission of consolidated magnetic tape reports prepared by computer and containing the information required to be included in written reports. The format of such magnetic tape reports and the frequency of submission must be acceptable to the division of the secretary of transportation."

The responsibility of keeping accident reports is borne by the division of vehicles. K.S.A. 8-249(b) provides:

"(b) The division also shall file all accident reports and abstracts of court records of convictions received by it under the laws of the state and, in connection therewith, maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which such licensee has been involved shall be readily ascertainable and available for the consideration of the division upon any application for renewal of a driver's license and at other suitable times."

With respect to traffic citations, K.S.A. 8-2105 and -2106 govern their issuance. The legal effect of the traffic citation is provided for in K.S.A. 8-2108 and 22-2202(6), they respectively provide:

"In the event the form of citation provided for in K.S.A. 8-2106 includes information, and is sworn to as required under the laws of this state, in respect to a complaint charging commission of the offense alleged in said citation to have been committed, then such citation when filed with a court having jurisdiction shall be deemed to be a lawful complaint for the purpose of prosecution under this act."

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"(6) "Complaint" means a written statement under oath of the essential facts constituting a crime, except that a notice to appear issued by a law enforcement officer pursuant to and in compliance with K.S.A. 1971 Supp. 8-5,127c [*] shall be deemed a valid complaint if it is signed by said law enforcement officer."

A citation, then, is to be filed with the court and becomes a part of the court's record as the complaint in any other criminal action.

Since the information contained on the copies of accident reports and traffic citations maintained by the police is required by law to be filed, kept and maintained elsewhere, such information is available to the public from a source other than the police. If after the passage of a reasonable amount of time accident reports and traffic citations are no longer valuable, such records may be destroyed.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

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