



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

November 9, 1976

ATTORNEY GENERAL OPINION NO. 76- 339

Mr. Calvin A. Strowig  
Chairman  
Governmental Ethics Commission  
109 West Ninth  
Topeka, Kansas 66612

Re: Governmental Ethics--Information--Confidentiality

Synopsis: The Governmental Ethics Commission is authorized to transmit information which it discovers in the course of its work which suggests possible or apparent violations of laws outside its jurisdiction to the appropriate county or district attorney or to the attorney general upon a determination that such official is conducting a pending investigation or inquiry concerning which such information is material, and upon the adoption of a resolution by the Commission authorizing such transmittal. The Commission is empowered to make all such inquiries necessary to determine whether any investigation or inquiry by any of such officials is pending, to which information in its custody is material.

\* \* \*

Dear Mr. Strowig:

Pursuant to K.S.A. 1975 Supp. 25-4186(b), and K.S.A. 1975 Supp. 46-260, the Governmental Ethics Commission is empowered to investigate matters within a limited jurisdiction, pertaining to campaign finance, lobbying and the ethical conduct of state officers and employees. During the course of such investigation and of its review and audit procedures, you point out, the Commission may

Mr. Calvin A. Strowig  
Page Two  
November 9, 1976

discover information relating to possible or apparent violations of laws outside its jurisdiction. In addition, you indicate, the Commission may, in the course of its work, become aware of information which, though not reflecting a possible or apparent violation of laws outside its jurisdiction at the time of discovery, might be of interest to other investigatory and enforcement authorities.

You inquire whether the Commission, absent a request by this office or by a district or county attorney, may refer such information to them and, if so, under what circumstances.

K.S.A. 1975 Supp. 25-4126 and K.S.A. 1975 Supp. 46-259 are substantially identical as they pertain to the question involved here. The former statute provides thus:

"The commission shall maintain a record of its investigations, inquiries, and proceedings. All records, complaints, documents, reports filed with or submitted to or made by the commission, and all records and transcripts of any investigations, inquiries, or hearings of the commission under this act shall be confidential and shall not be open to inspection by any individual other than a member of the commission, an employee of the commission, or a state officer or employee designated to assist the commission, except as otherwise specifically provided in this act. The commission may, by adoption of a resolution, authorize the release to the attorney general or to the county or district attorney of the appropriate county of any information, records, complaints, documents, reports, and transcripts in its possession material to any matter pending before the attorney general or any county or district attorney."

In order to support transmittal of information by the Commission to this office or to a county or district attorney, the information must be material to a matter before any of such officers which is pending at the time of transmittal, and transmittal must be authorized by a resolution adopted by the Commission. What constitutes a "matter pending" before the enumerated officers is not defined specifically. Presumptively, the term refers to a formal or informal investigation or inquiry which has been commenced by such officer, and which has not been closed at the time of transmittal.

Mr. Calvin A. Strowig  
Page Three  
November 9, 1976

Obviously, in order to authorize transmittal, the Commission must determine that there is indeed a "matter pending" before the officer, to which information in the custody of the Commission is material. When the Commission discovers information in the course of its work which relates to possible or apparent violations of law outside its jurisdiction, but within the jurisdiction of this office or of one or more county or district attorneys, it would be entirely appropriate for the Commission to direct an inquiry to the appropriate officer, inquiring whether that officer has pending any matter involving the possible or apparent violations which have come to the Commission's attention. If the officer responds affirmatively, and on the basis of that response, the Commission determines that the material in its possession is material to the matter before that officer, as outlined and defined in his or her response to the Commission, the Commission is then authorized to direct the transmittal of the information to such officer upon the adoption of an appropriate resolution.

It may be objected that the Commission has no authority to initiate such an inquiry, and further, that the making of the inquiry itself breaches the confidentiality required by this provision. First, the legislature obviously intended that the Commission should cooperate with the law enforcement authorities of this state, and specifically this office and the county and district attorneys, by providing that information in its possession which is material to any investigation or inquiry by such officers shall be furnished to them. The Commission must necessarily have the authority to determine whether the statutory prerequisites for transmittal exist in any given instance. If information in its possession suggests to the Commission that possible or apparent violations of law may exist, its authority to furnish material information in its possession to the appropriate prosecuting attorney reasonably and necessarily implies the authority to determine whether any such official is conducting an investigation or inquiry concerning such possible or apparent violations. Secondly, such an inquiry by the Commission itself breaches no confidentiality of its materials and records whatever, for it is designed only to determine whether there is a matter pending before a particular officer, concerning described subject matter.

Concerning information which does not suggest apparent or possible violations of law, but which may be deemed "of interest" to other investigatory or enforcement authorities, there appears to be no authority for transmittal of such information unless, once again, it is determined to be material to a pending matter before this office or a county or district attorney.

Mr. Calvin A. Strowig  
Page Four  
November 9, 1976

The cited statute provides no authority for transmittal of information to federal authorities, an omission which should be corrected promptly during the forthcoming legislative session.

In addition, the awkward and cumbersome restrictions upon the power of the Commission to furnish information concerning possible or apparent offenses under other laws to Kansas prosecutors should be removed. Obviously, if the Commission develops information in the course of its work which discloses apparent or possible violations of other laws, whether federal or state, the Commission should be empowered to cooperate freely with both federal and state law enforcement officials by turning over information in its custody which is pertinent to such violations, whether or not they are the subject of any pending investigation or inquiry. Such information is equally valuable to a prosecutor whether the possible offenses are yet unknown to him or her, or whether they are the subject of an ongoing investigation. It is intolerable that a state regulatory agency such as the Commission should be prohibited by law from the fullest measure of cooperation with both state and law enforcement agencies.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

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