

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 14, 1977

ATTORNEY GENERAL OPINION NO. 77-354

The Honorable Elwill M. Shanahan
Secretary of State
2nd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Secretary of State--Documents and Records--Custody

Synopsis: Under K.S.A 75-404 and K.S.A. 1976 Supp. 75-408, the Secretary of State is responsible for the safekeeping of papers, records and documents required to be filed in that office, and may not permit such documents to be taken from the premises of that office unless reproduction cannot be made within the facilities of that office itself. This provision does not, however, prohibit compliance with any duly issued subpoena duces tecum requiring the production of any paper, record or document in the custody of the Secretary of State. Where production of any such document pursuant to a subpoena duces tecum may be for such purposes as handwriting analysis or the like and may subject an original document to a possibility of damage or destruction, it is entirely appropriate to seek from the court a protective order requiring the party seeking production to assure that necessary steps are taken to safeguard the integrity of the document.

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Dear Secretary Shanahan:

K.S.A. 1976 Supp. 75-408 states in pertinent part thus:

"Papers, records and documents in the office of the secretary of state shall not

The Honorable Elwill M. Shanahan
Page Two
November 14, 1977

be permitted to be taken from such office, or from the secretary of state's possession or that of his or her clerks, except where reproduction of any such papers, records or documents cannot be made within the secretary of state's office."

K.S.A. 75-404 states in pertinent part thus:

"The secretary of state shall be the custodian and charged with the safekeeping of all enrolled bills and resolutions, and he shall not permit the same to be taken out of his office unless by order of the governor, or by resolution of one or both houses of the legislature"

You advise that from time to time, you receive a subpoena duces tecum for records on file in your office, requiring the production of records, e.g., for handwriting analysis, to be performed from the originals at a location outside of your office. As you point out, compliance with a subpoena which results in removal of documents from your office to a laboratory or other facility could result in loss or destruction of the original document.

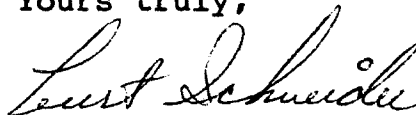
You ask that we advise as to your responsibility in complying with a subpoena duces tecum which requires delivering original documents to locations outside of your office, in view of the cited statutes. In particular, you ask whether the cited statutes impose upon you an affirmative responsibility to seek to quash or modify a subpoena duces tecum.

The cited statutes prescribe your responsibility for the safekeeping of documents which are filed in your office. These provisions should not be construed, in my judgment, to require defiance of a valid subpoena duly issued by a court of competent jurisdiction. Nor do these provisions require that you seek to resist, oppose or modify any subpoena duces tecum which requires the production of an original document from your office at a facility away from the premises of your office. Certainly, where the subpoena requires the production of documents for various tests and analyses which entail any possibility of damage to or destruction of an original document which is officially entrusted

The Honorable Elwill M. Shanahan
Page Three
November 14, 1977

to your custody, it would be entirely appropriate to apply to the court for a protective order requiring the party seeking production to take those steps necessary to avoid any damage or destruction of the documents involved, and this office is prepared to offer any necessary assistance in such circumstances.

Yours truly,

A handwritten signature in cursive script, appearing to read "Curt T. Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj