



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 29, 1978

ATTORNEY GENERAL OPINION NO. 78- 134

Mr. Frederick K. Cross
City Attorney
Roeland Park, Kansas 66295

Re: Keeping Of Arrest Records By Law Enforcement Agencies--
Conviction Records In Municipal Court Where Accused
Receives Trial De Novo In District Court

Synopsis: Law enforcement agencies may maintain arrest records and may enter a municipal court conviction of an offense other than a traffic offense into its criminal record data banks.

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Dear Mr. Cross:

You ask whether the law enforcement community is entitled to keep arrest records for identification and investigative purposes when prosecution has ended in Municipal Court and whether it is proper to enter a municipal court conviction into law enforcement criminal record data banks even though the accused exercises his right to appeal to the district court.

In discussing the equitable powers of the Kansas courts to expunge police records, the Kansas Supreme Court recognizes a general

"public interest in the right of law enforcement agencies to maintain and disseminate reports useful for the purposes of identification, apprehension, and arrest of individuals for criminal activity." [Bradford v. Mahan, 219 Kan. 450, 459 (1976)]

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Therein, the court limited Kansas courts' powers of expungement or correction of police reports to

"cases involving extreme circumstances where such relief is necessary and appropriate to preserve basic legal rights, where for example arrests or false reports are made without probable cause for purposes of harassment and under circumstances which constitute police misconduct." [Bradford v. Mahan, supra]

Since this case involved a district court's dismissal of a request to expunge a police report of a vehicle accident, a public record (emphasis added) under K.S.A. 8-1611, the court felt there may have been an infringement of a basic legal right. Such is not the case where the police maintain arrest records for the purposes of I.D. apprehension, etc., as hereinbefore set forth. Rather, since the arrest records are not promiscuously disseminated to the public, there is little chance of infringement of a basic legal right of an arrested person.

Generally, records of arrest are not disseminable to the public in Kansas and are governed by the Kansas version of the Privacy Act, Senate Bill 406, effective upon publication, March 1, 1978, which will appear in the 1978 Session Laws of Kansas in July, 1978. Since this law restricts the use of arrest data, specifically, Section 7(b) which provides:

"Noncriminal justice persons and agencies may receive criminal history record information, . . . as may be authorized by law. . ."

members of the general public will not have access to arrest data. The act provides criminal penalties for dissemination in violation of its provisions.

Further, the act makes a conviction a "reportable event" under Section 5(a)(5), as well as including appellate decision, under Section 5(a)(11). One of the purposes of the act is to insure to maximum extent feasible that the criminal justice community keeps its records up to date from the arrest through and including final disposition, such as acquittal dismissal on the appellate level. The act does not, however, alter the public nature of conviction information nor deny the public access to conviction information. See Section 1(b)(3). That is, conviction

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records are public in nature and a person convicted in Kansas courts acquires no right to have the record of his conviction kept confidential by criminal justice agencies under Senate Bill 406.

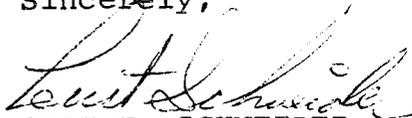
Section 1(b)(4) excludes all state and municipal traffic violations except vehicular homicide.

Consequently, in view of Bradford v. Mahan, supra, there is a general public interest served by the keeping of arrest records by law enforcement agencies, for the purpose of I.D., apprehension and arrest.

Further, Senate Bill 406, *supra*, makes a conviction a reportable event, and by definition, a record generally available to the public as a "court record of a public judicial proceeding". Section 5 of Senate Bill 406, *supra*, also makes any "other disposition at or following trial" de novo in the district court a reportable event.

Therefore, law enforcement agencies may maintain arrest records and may enter a municipal court conviction of an offense other than a traffic offense into its criminal record data banks.

Sincerely,


CURT T. SCHNEIDER
Attorney General

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