



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 22, 1978

ATTORNEY GENERAL OPINION NO. 78- 208

Mr. Douglas S. Brunson
Kiowa County Attorney
Kiowa County Courthouse
Greensburg, Kansas 67054

Re: Clerk of the District Court--County Treasurer--Open
Records--Record Search--Abstracters

Synopsis: The duties of the Clerk of the District Court as defined by K.S.A. 19-1302 and the County Treasurer in K.S.A. 19-506 do not authorize the "searching" of records by those officials for third parties and the "certifying" of the results.

* * *

Dear Mr. Brunson:

In your letter of May 15 you inquire as to the authority of the Clerk of the District Court and the County Treasurer to make a "search" of the records in their official possession and to certify their findings to third parties.

I concur with your stated finding of no statutory authority for these officials to engage in this searching and certifying activity.

K.S.A. 19-1302 circumscribes the duties of the Clerk of the District Court thus:

"The clerks of the district courts shall do and perform all duties that may be required of them by law or the rules and practice of the courts, and shall safely keep and preserve all papers, process, pleadings and awards that may be filed, or by law placed in their respective offices."

Mr. Douglas S. Brunson
Page Two
June 22, 1978

Similarly K.S.A. 19-506 delineates the duties of the County Treasurer as follows:

"It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatsoever source they may be derived, and all other moneys which are by law directed to be paid to him. All money received by him for the use of the county shall be paid out by him only on the orders of the board of commissioners, according to law, except where special provision for the payment thereof is or shall be otherwise made by law."

Essentially both statutes contemplate a custodial function by both officials over their respective records and nothing more.

As a further consideration the Open Records Act provides for the inspection of records in the possession of these officers as well as others by K.S.A. 45-201 thus:

"(a) All official public records of the state, counties, municipalities, townships, school districts, commissions, agencies and legislative bodies, which records by law are required to be kept and maintained, except those of the district court concerning proceedings pursuant to the juvenile code which shall be open unless specifically closed by the judge or by law, adoption records, records of the birth of illegitimate children, and records specifically closed by law or by directive authorized by law, shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen."

The thrust of this statute is to allow anyone access to these aforementioned records and place the burden of thoroughness of inspection upon them. These three statutes considered together appear to support your argument in that no duty on the part of the officials to search and certify findings has been legislated

Mr. Douglas S. Brunson
Page Three
June 22, 1978

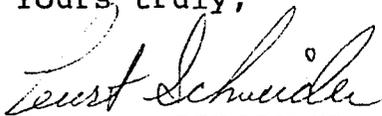
and furthermore no obstacle has been placed between third parties and the records at issue. On the contrary, the Legislature has in K.S.A. 58-2801 provided for the licensing and regulation of Title Abstracters for just this purpose.

As a final consideration you raise the issue of potential liability on the part of these officials for providing such certificates of record searches to third parties.

Assuming arguendo that such a certificate is provided, the search was conducted in a negligent manner and relied upon by the third party then liability may lie. Further if these officials are determined by a court of competent jurisdiction to be acting outside their statutory authority then the liability to the third party may take the character of a personal one.

Taking into consideration the aforementioned statutes delineating the duties of the officials in question along with the availability of uninhibited access to the records in their possession it is my opinion that your instructions are well founded and legally sound.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JBW:kj

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