

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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CURT T. SCHNEIDER
ATTORNEY GENERAL

October 3, 1978

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CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 78- 314

Mr. Stan Martin
Dickinson County Attorney
325 Broadway
Abilene, Kansas 67410

Re: Public Records Act--Petitions--Availability

Synopsis: A petition which is filed supporting an election pursuant to ch. 186, L. 1978, authorizing the issuance of licenses for the sale of alcoholic beverages in licensed food service establishments, is not a record which the county election officer is required by law to keep and maintain, and is thus not required to be made available for public inspection, although it may be made available if the county election officer so chooses.

* * *

Dear Mr. Martin:

You advise that recently, a petition was circulated in Dickinson County to submit to an election the issuance of licenses for the sale of alcoholic liquor in licensed food service establishments pursuant to ch. 186, L. 1978. Upon filing, it was determined that an insufficient number of qualified electors had properly signed the petition. Subsequently, the county election officer received a request for a copy of the petition or, in the alternative, a list of the names of the signers. The county election officer declined to furnish either a copy of the petition or the requested list.

Accordingly, you request my opinion whether the insufficient petition is subject to public inspection under K.S.A. 45-201, which provides in pertinent part thus:

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"All official public records of the state, counties, municipalities, townships, school districts, commissioners, agencies and legislative bodies, which records by law are required to be kept and maintained . . . shall at all times be open for a personal inspection by any citizen" [Emphasis supplied.]

Under ch. 186, § 10, L. 1978, the question of the issuance of a license to licensed food service establishments for the sale of alcoholic beverages shall be submitted to the voters of a county if a petition is filed which is signed by registered voters of the county equal in number to not less than five percent of the registered voters. The petition is not itself a record of any governmental action, but merely the written request of the signers, prepared and submitted in the manner prescribed by statute, that the question be so submitted.

Under K.S.A. 25-3601, the county election officer must determine the sufficiency of the petition. The act is silent as to its disposition once it is filed and its sufficiency is determined. Once the petition has been reviewed and it is determined that an election is or is not required, and there is no question as to the validity of the petition itself, the petition has served its purpose. There is no statute which requires, either expressly or impliedly, that petitions filed under ch. 186, § 10, be kept and maintained.

The Kansas public records law, K.S.A. 45-201 *et seq.*, was enacted in 1957, and has not been amended since. Its requirement for public disclosure of official records applies, in fact, to only a very small class of records, only those which "by law are required to be kept and maintained." Obviously, every governmental office, be it a city or county office, a board of education, a junior college board of trustees, or any other unit of government, maintains a wide variety of records, many of which are necessary to the conduct of its day-to-day business. At the same time, however, only a small portion of these records are ones which are either expressly or impliedly "by law required to be kept and maintained."

This office has no legislative power to require records to be made available to the public, unless the legislature has enacted appropriate statutory authority. As the existing statute is written, it applies to only a very restricted group of records *i.e.*, to only

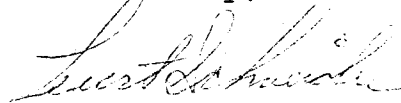
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those records which "by law are required to be kept and maintained." A petition filed under ch. 186, § 10, L. 1978, is required to be filed with the county election officer for a determination of its sufficiency. Once that determination is made, however, the act makes no express or implied requirement that it be maintained on file in that office. As a matter of prudent management the election officer would normally retain the petition, but there is no statutory requirement that it be retained as a public record.

There is a serious need for a substantially amended public records law, comparable to the Freedom of Information Act which the Congress has passed applicable to records of federal agencies. Kansas has seen much progress in recent years in the area of open meetings. We have a comprehensive and effective open meetings law. K.S.A. 75-4317 *et seq.* We have not made comparable progress in the area of public records. A substantial revision of the public records law should be high on the agenda of the next legislative session.

As to the present petition, for the reasons given above, I am constrained to conclude that it is not official public record which is required by law to be kept and maintained, and hence that it is not required to be made available for public inspection. Certainly, the county election officer may, if he or she chooses, make it available for public inspection, but is not required to do so.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj