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July 2, 1979

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ATTORNEY GENERAL OPINION NO. 79- 130

Mr. Charles V. Hamm
General Counsel
Department of Social and
Rehabilitation Services
State Office Building
Topeka, Kansas 66612

Re: Social Welfare--Confidentiality of Information Con-
cerning Applicants For and Recipients of Assistance--
Applicability of Federal Restrictions

Synopsis: The provisions of subsection (c) of K.S.A. 1978 Supp. 39-709b, which declare the "public list" of AFDC recipients to be "public records," conflict with federal statutory and regulatory provisions requiring restrictions as to the disclosure of information concerning AFDC recipients, and are, therefore, invalid under the Supremacy Clause of the United States Constitution.

Subsection (d) of K.S.A. 1978 Supp. 39-709b does not prohibit disclosure of names and addresses of general assistance recipients to the news media, and such disclosure does not constitute a denial of equal protection of the laws or violate a recipient's right to privacy.

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Dear Mr. Hamm:

You request our opinion as to whether subsections (c) and (d) of K.S.A. 1978 Supp. 39-709b conflict with federal restrictions

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[set forth in 42 U.S.C. § 602 (a) (9) (1975) and 45 C.F.R. §§ 205.50 et seq.] on the use or disclosure of information concerning applicants for benefits under the Aid to Families with Dependent Children (AFDC) program established under Title IV of the Social Security Act, 42 U.S.C. §§ 601-610 (1975).

The federal restrictions on disclosure are set forth in 42 U.S.C. § 602 (a) (9) (1975), which provides as follows:

"(a) A State plan for aid and services to needy families with children must

. . . .

"(9) provide safeguards which restrict the use . . . [or] disclosure of information concerning applicants or recipients to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part B, C, or D of this subchapter or under subchapter I, X, XIV, XVI, XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, and (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need; and the safeguards so provided shall prohibit disclosure, to any committee or a legislative body, of any information which identifies by name or address any such applicant or recipient;"

Implementing this provision, federal regulations articulate the safeguards which are required. In particular, 45 C.F.R. § 205.50 (a) (1) (iii) requires that a state plan will include a provision that "[p]ublication of lists or names of applicants and recipients will be prohibited." Disclosure of information

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concerning AFDC applicants and recipients in the State of Kansas is governed by K.S.A. 1978 Supp. 39-709b. Subsection (c) of that statute provides, in part, as follows:

"The secretary shall maintain a public list which shall contain the names and addresses of all recipients receiving aid to families with dependent children or general assistance benefits pursuant to this act or any act contained in article 7 of chapter 39 of the Kansas Statutes Annotated, and amendments thereto, together with the payment issued to each during the preceding month, except that the names and addresses of children in foster care who are receiving such benefits shall be excluded from such public list."

It is further provided in the same subsection that the Secretary shall prepare and retain monthly copies of the "public list," and that pertinent portions thereof shall be filed in each area and subarea S.R.S. office, as well as in the office of each county clerk. The "public list" is further declared to be a "public record" which "shall be open to public inspection at all times during the regular office hours."

Subsection (d) of K.S.A. 1978 Supp. 39-709b provides:

"It shall be unlawful for any person, association, firm, corporation or other agency to disclose, to make use of or to authorize, knowingly permit, participate in or acquiesce in the use of any lists or names or addresses contained in the public list under subsection (c) of this section for commercial or political purposes of any nature or to make use of or disclose confidential information except as provided in this section."

In considering whether the provisions of K.S.A. 1978 Supp. 39-709b, as set forth above, conflict with 42 U.S.C. § 602 (a) (9), a recent federal District Court decision, Michigan Welfare Rights Organization v. Dempsey, 462 F.Supp. 227 (1978),

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is very instructive. In that case, female recipients of benefits under Michigan's aid to families with dependent children program sought declaratory and injunctive relief regarding a state statute which permitted inspection by the general public of the name, address and amount of assistance of any recipient. Each of the individual plaintiffs alleged that she had been the object of physically and emotionally abusive treatment at the hands of her husband or boyfriend and that she feared a recurrence of such treatment if the husband or boyfriend were to learn of her whereabouts.

After a careful analysis of the history of 42 U.S.C. § 602 (a) (9) (1975) and other federal statutory provisions, the court held that the Michigan statute violated the federal provisions requiring safeguards as to the disclosure of information concerning AFDC recipients. Although the court noted that the Michigan statute did provide some safeguards (which will be discussed below), it found that these safeguards were insufficient because the statute would operate to require disclosure of plaintiffs' names/and addresses to would-be abusers (plaintiffs' husbands and boyfriends), and such disclosure would not "serve any of the permissible purposes specifically laid down by the federal statute."

An examination of the Kansas disclosure statute (K.S.A. 1978 Supp. 39-709b) reveals fewer safeguards than were present in the Michigan statute under consideration in the Dempsey case. The Michigan statute required a signed application from anyone seeking access to the subject records and also prohibited publication of names and addresses except in cases where fraud was alleged; no such requirements or prohibitions are present in the Kansas statute. The only restriction present in K.S.A. 1978 Supp. 39-709b relates to use of names and addresses for commercial or political purposes, and it is clear that "would-be abusers" are accorded access to the subject records in Kansas. Under these circumstances, it is our opinion that K.S.A. 1978 Supp. 39-709b conflicts with 42 U.S.C. § 602(a) (9) (1975), as did the Michigan statute which was attacked in the Dempsey case.

Having concluded that a conflict exists between the above statutory provisions, it is clear that federal law must prevail; where a state participates in a program funded by the federal government, it must comply with the applicable federal statutes, and any conflicting state statutes or regulations are invalid under the Supremacy Clause of the United States Constitution.

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King v. Smith, 392 U.S. 309 (1968); Rosado v. Wyman, 397 U.S. 397 (1970); California Human Resources Dept. v. Java, 402 U.S. 121 (1971); Townsend v. Swank, 404 U.S. 282 (1971); Carleson v. Remillard, 406 U.S. 598 (1972). It is, therefore, our opinion that those provisions of subsection (c) of K.S.A. 1978 Supp. 39-709b declaring the "public list" of AFDC recipients to be "public records" are invalid, and that inspection of such list may be allowed only under those restrictions set forth in 42 U.S.C. § 602 (a)(9) (1975).

In reaching the above conclusion, we want to make it clear that, in our judgment, the invalidity of K.S.A. 1978 Supp. 39-709b(c) does not extend to the "public list" of general assistance recipients. The monthly cash assistance provided through the general assistance program consists of state funds only [see K.S.A. 1978 Supp. 39-702(i)], and no federal restrictions on disclosure are applicable. In our opinion, it does not constitute a denial of equal protection of the laws for a state to follow federally imposed restrictions on disclosure of information concerning AFDC recipients, and at the same time to allow more liberal disclosure of information concerning general assistance recipients. The two programs are entirely distinct and seperable, one (AFDC) protecting eligible dependent children and the other (general assistance) protecting "needy" adults. We believe there is a reasonable basis for treating the two classes of recipients differently for purposes of disclosure of information, and the Equal Protection Clause of the 14th Amendment is not violated by such disparate treatment.

Similarly, we do not see any infringement of a general assistance recipient's Right to Privacy where information on the "public list" is disclosed to members of the general public, including the news media. Such information is declared to be a "public record" by subsection (c) of K.S.A. 1978 Supp. 39-709b, and it is well settled that there is no Right to Privacy with regard to "public records." See Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975); Right of Privacy, 43 L.Ed.2d 871, 881; 62 Am Jur. 2d, Privacy, § 18.

Finally, it is our opinion that subsection (d) of K.S.A. 1978 Supp. 39-709b does not prohibit disclosure of names and addresses of general assistance recipients to the news media. Such disclosure cannot be construed to be a "commercial" or "political" purpose, as those terms are used in the statute, since such a construction would exclude the news media from "public records" which any other member of the general public is entitled to

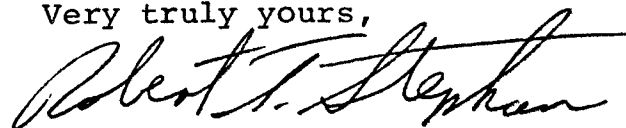
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inspect. In our judgment, the legislature could not have intended such an unreasonable result. We are greatly persuaded by the dissenting opinion of Justice Pomeroy in McMullan v. Wohlgemuth, 208 A.2d 888 (1973), wherein he attacked suggestions that publication of the names and addresses of public assistance recipients in the State of Pennsylvania constituted a "commercial purpose":

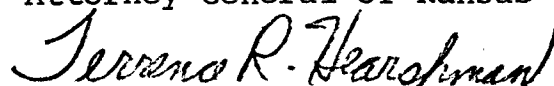
"It seems to me quite incongruous for the Court to go out of its way to construe statutes regulating access to public records in such a way as to exclude newspapers. Public welfare today comprises 16% of the annual general fund budget of the Commonwealth. Even more so than in the 1930's when government first undertook direct relief, it is definitely big business, involving half a billion dollars of Pennsylvania taxpayers' money and eight hundred thousand recipients. One may well ask who, if not the news media, would have incentive or resources to undertake an analysis of this area of the operation of our State government. The exclusion of newspapers from the sections of the Public Welfare Code of 1967 at issue here is tantamount to the exclusion of the public." (Emphasis by court.) Id. at 905.

The Supreme Court of the United States has likewise recognized a public benefit in the reporting of the true contents of public records by the news media. Cox Broadcasting Corp. v. Cohn, supra. It is, therefore, our opinion that subsection (d) of K.S.A. 1978 Supp. 39-709b does not prohibit disclosure of the names and addresses of general assistance recipients to the news media.

Very truly yours,



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Attorney General of Kansas



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