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July 23, 1979

ATTORNEY GENERAL OPINION NO. 79- 161

Mr. Edwin H. Bideau, III
Neosho County Attorney
123 W. Main
Chanute, Kansas 66720

Re: Criminal Procedure -- Criminal History Record Information --
Unlawful for Employers to Require Certain Acts

Synopsis: A person is entitled to inspect his or her own criminal history record information pursuant to K.S.A. 1978 Supp. 22-4709. However, K.S.A. 1978 Supp. 22-4710 forbids an employer from requiring an employee to make such an inspection in order to furnish the employer with a copy of the person's record. Further, an employer may not be authorized by the employee to view the employee's criminal history record information.

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Dear Mr. Bideau:

You have inquired as to whether an employer may obtain a release from a prospective employee, thereby allowing the employer to view the person's criminal history record in light of K.S.A. 1978 Supp. 22-4710(a), which provides:

"It is unlawful for any employer or prospective employer to require a person to inspect or challenge any criminal history record information relating to that person for the purpose of obtaining a copy of the person's record in order to qualify for employment."

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The Criminal History Record Information Act, K.S.A. 1978 Supp. 22-4701 et seq., is the response of the Kansas Legislature to the federal mandate requiring a state plan for the dissemination and security of criminal records. 28 C.F.R. §20.1 et seq. (1976). The pertinent portion of these federal regulations is found in 28 C.F.R. §20.20 (1976), which provides in part:

"(a) The regulations in this subpart apply to all State and local agencies and individuals collecting, storing, or disseminating criminal history record information processed by manual or automated operations where such collection, storage, or dissemination has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration. . . ."

In a letter of August 26, 1976, to the Director of the Kansas Bureau of Investigation, the Deputy Administrator of LEAA concluded that the Kansas plan "adequately addresses all requirements of the Regulations and is approved as submitted." Once enacted, K.S.A. 1978 Supp. 22-4701 et seq. became the controlling law in this state regarding criminal history record information. See Attorney General Opinion No. 79-98.

Inspection of one's own record of events is governed by K.S.A. 1978 Supp. 22-4709 which provides in part:

"(a) Subject to the provisions of this act and rules and regulations adopted pursuant thereto, any person may inspect and challenge criminal history record information maintained by a criminal justice agency concerning themselves."

Further, the only person who may be authorized to inspect another's criminal history record is that person's attorney. K.S.A. 1978 Supp. 22-4709 (a).

As we interpret K.S.A. 1978 Supp. 22-4710, it prohibits an employer from requiring that an employee inspect and obtain a copy of the employee's own criminal history record information, pursuant to the above quoted provision, "for the purpose of obtaining a copy of the person's record." We construe this statute as preventing an employer from having access to criminal history record information available only to the prospective employee "in order to qualify" that person for employment. Whether or not the employer states openly that a release of criminal history record information is required to qualify for a job or

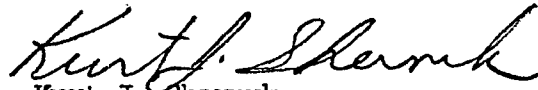
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merely requests the employee to sign a release for such information, the employee faces a paradox, either waive the privacy afforded by K.S.A. 1978 Supp. 22-4710 or risk the possible loss of a job. We believe that this statute was intended to prohibit the latter situation as well as the former. Therefore, we find K.S.A. 1978 Supp. 22-4710 prohibits an employer from circumventing its provisions through the use of a release from the employee authorizing the employer to view criminal history record information of the job applicant.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Kurt J. Shernuk
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RTS:TDH:KJS:may