



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-37
ANTITRUST: 296-5299

September 26, 1979

ATTORNEY GENERAL OPINION NO. 79-213

Mr. James A. Kuharic
Stevens County Attorney
P.O. Box 39
112 East Sixth Street
Hugoton, Kansas 67951

Re: Infants -- Juvenile Code -- Miscreants -- Traffic
Offenders -- Release of Juvenile Records

Synopsis: A judge of a district court has authority to order release of juvenile court records and records of other agencies regarding juvenile matters if needed for a legitimate purpose and ensuring that the party obtaining access will preserve confidential nature of these records.

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Dear Mr. Kuharic:

You have inquired as to whether a district court is authorized to release to the division of vehicles any records or other information concerning a juvenile's violation of any of the six serious traffic offenses as set forth in K.S.A. 1978 Supp. 38-802(e) (1) and (2), (as amended by L. 1979, ch. 122, §2).

In reading K.S.A. 1978 Supp. 38-805 (as amended by L. 1979, ch. 124, §1), we see that the legislature has specifically restricted public access to juvenile court records. Only a few designated persons, including those obtaining judicial permission, have the means of access thereto. This statute, as amended, states in relevant part:

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"(a) The record in the district court for proceedings pursuant to the Kansas juvenile code shall consist of the petition, process and service thereof, orders and writs, and reports and evaluations received or considered by the court. Such documents shall be recorded and kept by the court, separate from other records of the court.

"(b) All records, files or other information maintained, obtained or prepared by any officer or employee of the district court in connection with proceedings under the Kansas juvenile code shall be privileged and shall not be disclosed, directly, to anyone except:

"(1) A judge of the district court and members of the staff of the court designated by a judge of the district court;

"(2) parties to the proceeding and their counsel;

"(3) a public or private agency or institution providing supervision or having custody of the child under court order;

"(4) to any other person when authorized by a judge of the district court, subject to any conditions imposed by the judge;
or

"(5) a court in which such person is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, officials of penal institutions and other penal facilities to which such person is committed or a parole board considering such person's parole or discharge or exercising supervision over such person." (Emphasis supplied.)

In reviewing K.S.A. 1978 Supp. 38-805c, it is clear that access to records which are part of the juvenile justice system also is restricted. This statute provides in pertinent part:

"(b) Except as provided in subsection (c), all records of law enforcement officials or agencies, municipal courts and other governmental entities in this state concerning a public offense committed or alleged to have been committed by a child less than eighteen (18) years of age, shall be kept separate from criminal or other records, and shall not be disclosed to anyone except:

"(1) The judge, and members of the court staff designated by the judge, or a district court having the child before it in any proceeding;

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"(2) the parties to the proceeding and their counsel;
"(3) the officers of public institutions or agencies to whom the child is committed;
"(4) law enforcement officers of other jurisdictions when necessary for the discharge of their official duties; or
"(5) to any other person, when ordered by a judge of a district court in this state, under such conditions as the judge may describe.

"(c) subsections (b) and (d) shall not apply to records and files:

"(1) Made in conjunction with prosecutions pursuant to the code of criminal procedure;

"(2) concerning an offense for which a district court has directed prosecution pursuant to K.S.A. 1978 Supp. 38-808;

"(3) concerning a traffic offense described in subsection (e) of K.S.A. 1978 Supp. 38-802, which was committed or alleged to have been committed by a child fourteen (14) years of age or more; or

"(4) specified in K.S.A. 1978 Supp. 38-805." (Emphasis supplied.)

Subsection (c) (3) of K.S.A. 1978 Supp. 38-805c pierces the veil of confidentiality for a traffic offense described in K.S.A. 1978 Supp. 38-802 for juveniles fourteen (14) years of age or more, but by referring to K.S.A. 1978 38-802(e) it is apparent that the scope of K.S.A. 1978 Supp. 38-805(c) (3) encompasses the distinction regarding the six serious traffic offenses. That is, the six serious traffic offenses which are excluded by definition from the category of traffic offenses as used in K.S.A. 1978 Supp. 38-802(e) should be, in the opinion of this office, excluded from the disclosure provisions of 1978 Supp. 38-805c. Thus, bearing in mind that a juvenile between the ages of fourteen (14) and eighteen(18) who is charged and convicted of any of the six serious offenses is treated as a "miscreant child" (See Attorney General Opinion, No. 79-197), the confidentiality of the juvenile court records and the records of any other governmental entities in this state concerning a public offense committed or alleged to have been committed by a child less than eighteen (18) years of age is preserved in subsection (b) of K.S.A. 1978 Supp. 38-805c.

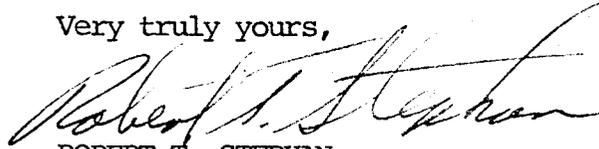
When the above statutes are read in harmony, it is evident that the legislature intended that records concerning juvenile proceedings and juvenile offenses are privileged and should not be disclosed except under specific statutorily identified circumstances. By restricting access of official records in juvenile proceedings, the legislature has thereby prevented the release of the information to the public and

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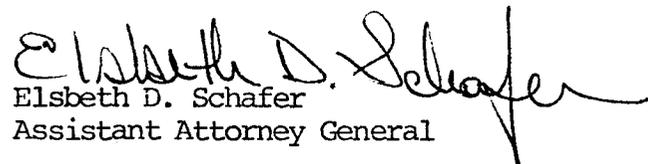
has kept it from the public domain. It is our opinion, therefore, that a blanket grant from a district court judge permitting the division of vehicles general access to juvenile records and other related information would be contrary to the spirit of the law as expressed in the Kansas juvenile code.

However, it is quite clear that a district court judge has the authority to order the release of juvenile court records and records of other agencies regarding juvenile matters under K.S.A. 1978 Supp. 38-805(b) (4) and (5). But in so doing that judge should ascertain that the information is needed for a legitimate purpose and that the division of vehicles will observe procedures to restrict access to this information in compliance with the statutory plan that juvenile records remain privileged and confidential.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Elsbeth D. Schafer
Assistant Attorney General

RTS:TDH:EDS:may