



STATE OF KANSAS

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December 13, 1979

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ATTORNEY GENERAL OPINION NO. 79-296

Mr. Philip E. Winter
Assistant County Attorney, Lyon County
Office of the County Attorney
Lyon County Courthouse
Emporia, Kansas 66801

Re: Procedure, Civil--Rules of the Supreme Court--
Reproduction and Disposition of Court Records

Synopsis: The disposition of original court records is governed by Supreme Court Rule No. 108, Relating to District Courts, as provided by K.S.A. 1978 Supp. 20-160. The procedures established therein are exclusive, and must be complied with before district court documents may be destroyed.

* * *

Dear Mr. Winter:

On behalf of the County Attorney of Lyon County, you have requested our opinion on the length of time that the Lyon County District Court must maintain certain court records and documents. Specifically, you list the following kinds of items: ledger sheets on cases which have been finally disposed, traffic ledgers, marriage worksheets and health certificates, crippled childrens' files, cancelled checks, receipts, and bank statements. Although you do not so state, we assume that the latter documents deal with financial transactions involving the District Court.

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Pursuant to K.S.A. 1978 Supp. 20-160, in 1977 the Supreme Court enacted No. 108 of its rules governing district courts. The rule, which is lengthy, appears at K.S.A. 1978 Supp. 60-2702a (also at 221 Kan. lxx) and in our opinion speaks directly to the questions you have raised. Basically, the rule divides court records into two categories--those which may be disposed of only after certain procedures are followed, and those which may be destroyed in a much more summary fashion. As the latter group appears to include most of the items you inquire about, it will be discussed first.

Subsection (d) of Rule 108 provides that certain records may be destroyed by order of the administrative judge of the judicial district, without additional steps. (The sole exception to this involves the situation where a file notation made by the judge who heard the case indicates it should be preserved.) Six specific categories of documents are listed, together with the time they must be preserved. Those of interest here include:

"(1) All violations of the fish and game laws, and records concerning traffic violations, except those relating to driving while under the influence of intoxicating liquor or drugs, five (5) years after final disposition of the case.

. . . .

"(4) Records of proceedings pursuant to K.S.A. 74-3401 et seq., (Kansas Crippled Childrens Commission), five (5) years after the final disposition of the case.

"(5) Affidavits made and filed pursuant to K.S.A. 23-106 (Marriage License Statute), five (5) years after the date of the affidavit.

"(6) Documents, the primary purpose of which is to record the funds received and disbursed by the clerk of the court, including but not limited to receipts, deposit books, cancelled checks, check stubs, bank statements, and check registers, seven (7) years after the same have been audited and approved." (Emphasis added.)

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From the above, we would conclude that the administrative judge has the discretion to order the disposition of any receipts, cancelled checks or bank statements older than the limit prescribed, i.e., seven years. Likewise, traffic ledgers and crippled childrens' files made pursuant to K.S.A. 74-3401 et seq., would appear to be subject to the same summary treatment, based on paragraphs (1) and (4).

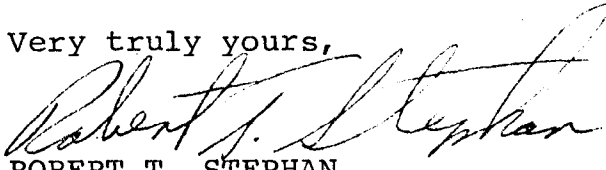
We would not reach the same conclusion, however, as to marriage worksheets and health certificates, as the statute [at (5)] is quite specific that only the affidavits made and filed pursuant to K.S.A. 23-106 (regarding lawful age) may be so disposed of. As the two types of documents about which you inquire are quite different, we are not of the opinion that this subparagraph includes them.

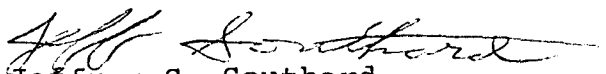
Therefore, the above documents need to be considered in the context of the first, more-complicated alternative, along with the ledger sheets concerning those cases which have gone to a final disposition. This alternative method of disposition has three steps, as set out in subsections (a), (b) and (c) of the rule. First, the records must be reproduced in some way, either by the use of photographs, microphotographs or film. At the same time, the Supreme Court must be advised, in writing, of which records are being so processed.

Once this is done, permission of the Supreme Court must be obtained before the original records may be destroyed. Following this step, the court must contact both the State Historical Society and any similar group at the county level, and give them 60 days to respond to the offer of such records for their own use and possession. Only if no response is forthcoming may the records finally be destroyed. As there does not appear to be any exemption for the three types of records mentioned immediately above, it would be our opinion that the above procedures must be followed in order for them to be destroyed.

In conclusion, the disposition of original court records is governed by Supreme Court Rule No. 108, Relating to District Courts. The procedures established therein are exclusive, and must be complied with before district court documents may be destroyed.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


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RTS:BJS:JSS:gk