



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 115

The Honorable Robert D. Miller
State Representative
One Hundred-Tenth District
Room 175-W, Statehouse
Topeka, Kansas 66612

Re: Counties and County Officers -- Destruction of
Records and Documents -- Time Limitations

Synopsis: The disposal or destruction of documents in the control of the county clerk is governed by specific statutes which require that county documents and records be retained seven, fifteen, or twenty years depending upon the nature of the document. Cited herein: K.S.A. 19-254, K.S.A. 19-325, K.S.A. 12-120, K.S.A. 12-121, K.S.A. 60-2702.

* * *

Dear Representative Miller:

You have requested an opinion regarding the length of time the Ellis County Clerk must preserve certain county records and documents. The correspondence from the Ellis County Clerk, attached to your opinion request, states that the county clerk's office is "crowded for storage space" which presumably prompted the opinion request.

The Ellis County Clerk compiled a "List of Reports and Documents Etc." which contains twenty-one separate document and record items. That list is as follows:

1. Expenditure & Revenue Analysis - monthly reports
2. Copies of checks
3. Delinquent Warrant Lists
4. Delinquent Tax Sale Lists

5. Payroll Claim Vouchers
6. Other Payroll Information (W-2 forms etc.)
7. Purchase Orders
8. Time Cards
9. Intangible Tax Certificates (K-200)
10. Game License Copies
11. Contract & Agreements (Obsolete)
12. Insurance Policies (Obsolete)
13. Petitions
14. Resolutions
15. Probate Court Orders
16. Notes of Commissioners Minutes
17. Quarterly Reports such as KPERS, Social Security, Unemployment Insurance
18. Adopted Budgets
19. Tax Abstracts
20. Valuation Abstracts
21. Data Processing Printout used in preparation of annual tax and assessment roles

As a preliminary matter it is necessary to consider relevant statutes. K.S.A. 19-254 states:

"The board of county commissioners of any county and any one or more elected officers of such county having previously offered to the state historical society and having received notice in writing from said society that it has no interest therein, may jointly petition the district court having jurisdiction in such county for permission to destroy any records, papers, or documents which are more than twenty (20) years old and which are located in or on any county-owned property

or building, except court records. Notwithstanding the provisions of this section, election records may be destroyed as provided by K.S.A. 19-256, 25-2708, 25-2709 and 25-3301."

K.S.A. 19-256 provides:

"This act [K.S.A. 19-254 to 19-258, inclusive] shall apply to all records, papers and documents which are more than twenty (20) years old except court records and election records."

K.S.A. 19-325 states:

"The county clerk of each county may destroy the following papers after such papers have been on file in the county clerk's office for a period of fifteen (15) years: (1) No property tax statements (personal). (2) Nontaxable personal property statements, both tangible and intangible. (3) Warrants both original and duplicates canceled by board of county commissioners. (4) Claims presented and allowed by board of county commissioners. (5) County treasurer's daily statements to county clerk. (6) Township trustee's and township clerk's annual reports. Notwithstanding the provisions of this section, all such papers which shall have been on file in the county clerk's office for fifteen (15) years prior to the taking effect of this act may be destroyed."

K.S.A. 19-326 states:

"For the purpose of this act [K.S.A. 19-326, 19-327] the words 'documents' and 'records' mean:

- "(a) No property assessment sheets;
- "(b) personal property assessment sheets;
- "(c) real estate assessment sheets;
- "(d) oil assessment sheets;
- "(e) county vouchers;
- "(f) individual records of commissioners proceedings, whichever same are recorded in commissioner's journal;

"(g) annual reports of township officers;

"(h) township and school district budgets;

"(i) books of list residents or enumeration that are not dated for year taken, or have become illegible;

"(j) county treasurer's daily statements to county clerk;

"(k) deputy assessors and township officers' bonds; and

"(l) county officers' bonds."

K.S.A. 19-327 provides:

"The county clerk and the county assessor of each county may dispose of or destroy all such documents and records which have been on file in such office for a period of seven years from date of filing of same which have thereby become obsolete and for such reason it is unnecessary to preserve same for the protection of the welfare of the officer, county or public good, except those documents described in subsection (b) and (c) of K.S.A. 19-326 will not be destroyed until they have been on file or of record for fifteen years: Provided, Such destruction or disposal of any such documents or records shall not be made until approval of same shall be made by the board of county commissioners and shown by the minutes of said board."

The above-quoted statutes all relate to retention and disposal of county records. Statutes which relate to the same thing or which have a common purpose are in pari materia and should be construed together as if they comprised a single law. See 82 C.J.S. Statutes, §366, p. 801-803, Graham v. Corporon, 196 Kan. 564, (1966), Sutton v. Frazier, 183 Kan. 33 (1958). Therefore, construing K.S.A. 19-254, 19-256, 19-325, 19-326, and 19-327 in pari materia, indicates that all county records and documents (except court and election records) must be retained for twenty years, unless the document or record is listed in either K.S.A. 19-325 or 19-326(b) or (c), in which case retention is required for fifteen years, or is listed in any of the remaining subsections of K.S.A. 19-326, in which case retention is required for seven years. Thus, to determine whether the documents and records specified

on the list prepared by the Ellis County Clerk are subject to a retention period of less than twenty years requires a comparison of such list with the provisions of K.S.A. 19-325 and 19-326. Although such comparison reveals some identify between the documents and records listed in K.S.A. 19-325 and 19-326 and the documents and records listed by the Ellis County Clerk, not all of the latter are specifically addressed by the pertinent statutes. Hence, it must be determined whether these statutes may be construed to include documents and records not explicitly listed therein.

The interpretation of the subject statutes requires the application of basic tenets of statutory construction. It is well-settled that statutes should be construed to effect the intent of the legislature. Coleman v. Brotherhood State Bank, 3 Kan. App.2d 162 (1979). It is generally held that the intended scope of a statute may not be enlarged or amended by interpretation. Schroder v. Kansas State Highway Commission, 199 Kan. 175 (1967). Instructive in this regard is Chief Justice Johnston's opinion in Alter v. Johnson, 127 Kan. 443 (1929), where he stated:

"In interpreting a statute the safer rule for us to follow is to ascertain the true intent of the legislature. That intent is to be derived in the first place from the words used, and when that intent is apparent and is appropriate to the obvious purpose of the act we should give that intent effect rather than to search for another meaning, although we might think some other policy would be effectual" Id. at 447.

Also relevant here is the rule of statutory construction which provides that the insertion or inclusion of one thing implies the exclusion of another (expressio unius est exclusio alterius). In In Re Olander, 213 Kan. 282 (1973), the Supreme Court of Kansas observed that this maxim could be applied in determining legislative intent which is not otherwise manifest. The opinion also cautions that the maxim should not be used "to override or defeat a clearly contrary legislative intention." 213 Kan. at 285.

The maxim of expressio unius est exclusio alterius was applied in Olander, supra, to determine whether the legislature intended to authorize persons other than those specified in K.S.A. 22-2513 to apply for orders permitting eavesdropping. In Olander an assistant district attorney had made application to the court for an eavesdropping order. The statute in question specified that only the attorney general, assistant attorneys general, or county attorney could validly make

such application. The opinion held that, even though the county attorney had delegated the authority to the assistant county attorney to apply for the eavesdropping order, the statute was "intended to limit strictly the class of persons who may apply for an order permitting electronic surveillance" and that an assistant county attorney was not statutorily designated to do so. The Olander opinion deals with an extremely sensitive area of constitutional law and individual rights which, no doubt, influenced the Court's restrictive interpretation of the subject statute. However, the maxim expressio unius est exclusio alterius has also been applied in less sensitive areas of the law.

In State v. Showers, 34 Kan. 269 (1885), the defendant had been convicted of violating a section of the liquor law as it read prior to legislative amendment. The Supreme Court of Kansas reversed the conviction because the legislature had amended the liquor law to exclude the defendant's acts as illegal. The court applied expressio unius est exclusio alterius and held that had the legislature intended to prohibit defendant's acts the applicable statute would have so specified. See, also, Southwestern Iron and Steel Industries v. State, 597 P.2d 981 (Ariz. 1979), Goebel v. Thornburg Township, Delaware County, 303 A.2d 57 (Pa. 1973), Collins v. National Aniline Div., Allied C. & D. Corp., 186 N.Y.S. 2d 979 (1959), and Sutherland, Statutory Construction (4th Ed. 1975) §47.23, p. 123 and the authorities cited therein.

The six listed items in K.S.A. 19-325 and the twelve listed items in K.S.A. 19-326 are not broad categories of documents and records. Rather, the listed items are documents and records that refer to specific information. The maxim of expressio unius est exclusio alterius applied to K.S.A. 19-325 and K.S.A. 19-326 would lead to the conclusion that only the specified records and documents listed therein are subject to the respective fifteen-year and seven-year retention requirements. This conclusion generates the corollary that all other county documents and records are subject to the twenty year retention requirement of K.S.A. 19-254 et seq.

Further support for this conclusion is apparent when the statutory authority of county clerks regarding document retention policy is contrasted with the authority of city officials in this area. K.S.A. 12-120 lists eleven specific document and record items and required retention periods for each. However, K.S.A. 12-121 permits city officials to exercise broad discretion in this area. K.S.A. 12-121 states:

"Nothing in K.S.A. 12-120 shall be deemed to apply to records, documents or papers not specifically mentioned nor to authorize the

destruction of records, documents or papers which in their nature should be preserved permanently, nor to prohibit destruction of records, documents or papers obviously of only temporary value after a reasonable time."

This broader grant of authority could be statutorily conferred on county clerks. However, the legislature has made a distinction between city and county powers in this area, which distinction has a net result of restricting the authority of county clerks.

Arguably, the broad language of K.S.A. 19-327, read apart from K.S.A. 19-326, would allow the disposal of all "obsolete" documents after retention for seven years. However, the requirements of K.S.A. 19-327 relate only to the listed items in K.S.A. 19-326. These statutes were originally enacted as a single legislative act with two separate sections. (See L. 1947, ch. 216, §§1,2.) With this in mind, it is readily apparent that the only purpose of K.S.A. 19-326 is to define "documents" and "records" for use in K.S.A. 19-327. Hence, the retention and disposal requirements of K.S.A. 19-327 relate only to the "documents" and "records" listed in K.S.A. 19-326.

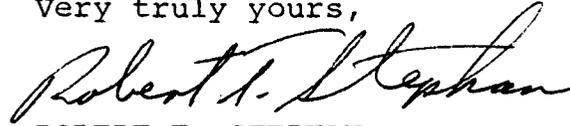
Therefore, in our judgment, the following documents from the county clerk's list are within the scope of K.S.A. 19-325 and K.S.A. 19-326 or other document retention law. Each will be discussed separately.

1. Payroll Claim Vouchers - These records are covered by 19-326(e) and should be retained at least seven years pursuant to K.S.A. 19-327.
2. Probate Court Records - Attention is directed to K.S.A. 1981 Supp. 60-2702a (Sup.Ct.R. 108) which governs the retention, maintenance, reproduction, and disposal of original court records.
3. Notes of County Commission Meetings - These records are covered by K.S.A. 19-326(f) and should be retained at least seven years pursuant to K.S.A. 19-327. Please note here that these statutes permit disposal of the records only after documentation of commissioners' proceedings are recorded in a commissioners' journal.
4. Adopted Budgets - To the extent that adopted budgets are individual records of commission proceedings, and if same are recorded in the commissioners' journal, adopted budgets also would be covered by K.S.A. 19-326(f) and should be retained at least seven years pursuant to K.S.A. 19-327.

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The balance of the documents and records listed by the Ellis County Clerk are not specifically within the scope of either K.S.A. 19-325 or K.S.A. 19-326. Therefore, these documents are subject to the retention requirements of K.S.A. 19-254.

Very truly yours,



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ATTORNEY GENERAL OF KANSAS



Robert Vinson Eye
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