



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 49

Mr. Marvin Webb, Director
Grain Inspection Department
535 Kansas Avenue
Topeka, Kansas 66603

Re: Grain and Forage -- Grain Storage; Terminal and
Local Warehouse -- Financial Statements; Public
Records

Laws, Journals and Public Information -- Records
Open to Public -- Grain Inspection Department;
Financial Statements

Synopsis: Financial statements of public grain elevator
operators filed pursuant to K.S.A. 1982 Supp.
34-228 are documents of public record, available
for public inspection pursuant to K.S.A. 1982
Supp. 45-201. Confidential information contained
in such statements which is closed by law may be
deleted from an otherwise public document. Cited
herein: K.S.A. 1982 Supp. 34-228, K.S.A. 34-229,
K.S.A. 1982 Supp. 45-201, K.A.R. 1982 Supp. 25-1-1.

* * *

Dear Mr. Webb:

You inquire whether the filings of licensed grain elevator
operators are documents of public record and hence available
to the public for inspection. Specifically, your inquiry
concerns disclosure of the financial statements of the afore-
mentioned public warehousemen applying for a license to do
business in Kansas.

The Kansas Open Records Act, K.S.A. 1982 Supp. 45-201 et seq.,
states in pertinent part:

"All official public records of the state . . . which records by law are required to be kept and maintained . . . shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen."

Financial statements of applicants for a public warehouseman's license are required to be filed as part of the licensure procedure pursuant to K.S.A. 1982 Supp. 34-228. That statute states:

"Any person desiring to engage in business as a public warehouseman in this state shall, before the transaction of any such business, present to the director of the state grain inspection department, a written application for a license . . . and further setting forth a complete certified financial statement of recent date on a blank furnished by the director."

We note the aforementioned statute, which requires the financial statement to be filed, is silent with respect to the director's duty to keep and maintain the document. However, this office has previously opined that, in certain instances, the requirement of "keeping and maintaining" the document may be implied from a statute which simply requires a document to be filed. See Att'y Gen. Op. Nos. 78-67 and 75-314.

Recently, the Kansas Court of Appeals, in interpreting the "kept and maintained" language of K.S.A. 1982 Supp. 45-201, concluded that

"[p]ublic records include not only papers specifically required to be kept by a public officer but all written memorials made by a public officer within his or her authority where such writings constitute a convenient, appropriate, or customary method of discharging the duties of the office." City of Topeka v. Stauffer Communications, Inc., 7 Kan. App. 2d 353 Syl. 2 (1982).

Although the certified financial statement delivered to the Grain Inspection Department is not prepared by a public officer, certainly it is retained by the department as a convenient, appropriate or customary means of performing the department's official licensing duties. For example, K.S.A. 34-229 requires the licensed warehouseman to give a surety bond as provided by statute and the director is authorized to require an additional bond where he determines the original bond to

Marvin Webb
Page Three

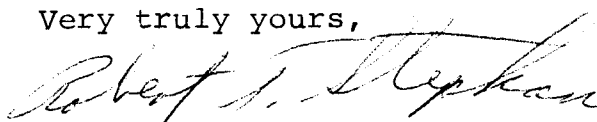
be inadequate or insufficient security against loss. In examining the financial condition of a licensed warehouse, the director may look to the net worth of the licensee "as determined from the financial statement required by K.S.A. 1980 Supp. 34-229." K.A.R. 1982 Supp. 25-1-1. In short, maintenance of the required financial statement is necessary in performing the departmental duty of determining the continuing financial security of a licensed grain warehouseman. Thus, it would appear that the financial statement is required to be kept by the Grain Inspection Department within the meaning of the Kansas Open Records Act.

It must be noted, however, that all information included in the financial statement may not be subject to public disclosure where state or federal law requires otherwise. Specifically, K.S.A. 1982 Supp. 45-201 exempts "records specifically closed by law or directive authorized by law." Since we are not informed of what specific information will be included on such financial statements, we cannot advise as to what, if any, records or information would be exempt under this provision. Certainly, we can imagine that certain tax information or court settlements may be closed by law or court order. Where such information is closed, the department has a duty to delete the confidential information and make available the remainder of the financial statement. See State v. Harder, 230 Kan. 573 (1982).

We note further that K.S.A. 1982 Supp. 45-201 may be amended during the 1983 legislative session. See 1983 House Bill No. 2327. The foregoing conclusions of law may be subject to change if the statutory law is substantially altered.

Therefore, it is our opinion, that financial statements of public grain elevator operators filed pursuant to K.S.A. 1982 Supp. 34-228 are documents of public record, available for public inspection pursuant to K.S.A. 1982 Supp. 45-201. Confidential information contained in such statements which is closed by law may be deleted from an otherwise public document.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle