



STATE OF KANSAS

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February 14, 1984

ATTORNEY GENERAL OPINION 84- 16

Ms. Jean Duncan
Real Estate Specialist
Kansas Real Estate Commission
217 East Fourth
Topeka, Kansas 66603

Re: Laws, Journals and Public Information -- Records Open
to Public -- Definitions

Crimes and Punishments -- Code; Crimes Affecting Public
Trusts -- Unlawful Sale of Names Derived From Public
Records.

Synopsis: K.S.A. 1983 Supp. 21-3913, as amended, prohibits a
person from knowingly selling, giving or receiving,
for the purpose of selling or offering for sale any
property or service to persons listed therein, any
list of names and addresses contained in or derived
from public records. This statute prohibits the
Kansas Real Estate Commission from knowingly pro-
viding lists of names maintained as a public record
to private schools for the purpose of offering to
sell to persons listed services provided by the
school. Cited herein: K.S.A. 1983 Supp. 21-3913;
45-206; 45-207; 1984 House Bill 2668.

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Dear Ms. Duncan:

You have requested an opinion from this office on the question of
whether New Section 11 of 1983 House Bill 2327 will prevent the
Real Estate Commission from providing lists of names maintained
on Commission license applicant records to private schools which
use the lists to notify applicants of real estate courses avail-
able through the school. You indicate that the Commission cur-
rently provides such lists to schools for a fee which is estab-

lished at the actual cost of furnishing the copies.

1983 House Bill 2327 constitutes the new Kansas Open Records Act. New section eleven of that bill, which appears in the statute book at K.S.A. 1983 Supp. 21-3913 provides:

- "(a) Except to the extent otherwise authorized by law, no person shall knowingly sell, give or receive, for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records.
- (b) Violation of this section is a class C misdemeanor."

We note here that 1984 House Bill No. 2668 (which as of this date has now passed the Senate and House and has been signed by the Governor) affects a technical amendment of 1983 House Bill 2327. The 1984 bill corrects the inadvertent deletion from New Section 11 of the phrase "other than from public records of the division of vehicles obtained under K.S.A. 74-2012 and amendments thereto." In all other respects the act remains as it was signed by the Governor in 1983. In order for the Commission's practice of providing lists to be affected by this section, three elements must be shown. First, the lists must be contained in or derived from "public records." Second, the lists must be knowingly sold or provided for the purpose of selling or offering for sale property or services to the persons on the list. Third, providing the lists to the schools must not be otherwise authorized by law.

Addressing these points in order we find that the Kansas Open Records Act (K.S.A. 1983 Supp. 45-206 et seq., as amended) defines a public record as:

". . . .any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency." See K.S.A. 1983 Supp. 45-207 (f)(1).

The Kansas Real Estate Commission is clearly a "public agency" within the meaning of K.S.A. 1983 Supp. 45-207(e)(1) which provides:

"'Public agency' means the State or any political or taxing subdivision of the State, or any office, officer, agency or instrumentality thereof. . . ."

Thus, if the lists you describe are maintained and are in the possession of the agency they are "public records" under the Open Records Act definition of the term.

Second, it appears from your letter that the Commission would provide the lists to private schools fully aware that the schools

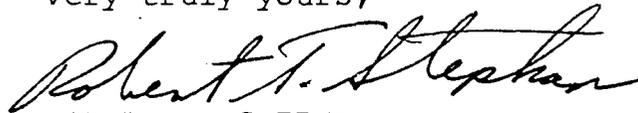
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intend to utilize the lists to sell or offer for sale to the persons on the list certain services provided by the schools. This is apparently the conduct the legislature intended to prohibit by the enactment of K.S.A. 1983 Supp. 21-3913, as part of the new open records act. (See L.1983, Ch. 171, as amended.)

Finally, our research has not disclosed any law which would otherwise authorize the Commission to provide to the schools lists derived from the public records.

Therefore, it is our conclusion that the enactment of K.S.A. Supp. 21-3913, as amended, prohibits the Commission from knowingly providing lists of names maintained as a public record to private entities for the purpose of offering to sell to the persons listed services provided by the private entities.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary F. Carson
Assistant General Attorney

RTS:BJS:MFC:crw