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March 21, 1984

ATTORNEY GENERAL OPINION NO. 84- 26

Thomas E. Kelly  
Director  
Kansas Bureau of Investigation  
3420 Van Buren  
Topeka, Kansas 66611

Re: Criminal Procedure -- Criminal History Record  
Information -- Management Control of Division  
of Information Systems and Computing

Synopsis: The Kansas Bureau of Investigation has both the authority and the duty to oversee and control the collection and dissemination of criminal history record information at the state level. This responsibility includes management control over DISC as part of the criminal justice information system relating to the collection, storage and dissemination of criminal history record information. Cited herein: K.S.A. 1983 Supp. 22-4705(d), K.S.A. 1983 Supp. 22-4701(d), K.S.A. 22-4704, K.A.R. 10-14-1, 42 U.S.C. 3771, 28 C.F.R. 20, 42 U.S.C. 3701.

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Dear Mr. Kelly:

As Director of the Kansas Bureau of Investigation [K.B.I.] you have requested our opinion as to the legal effect of a recently completed written agreement between the Division of Information Systems and

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Computing [DISC] and the Kansas Highway Patrol. It is our understanding that this agreement purports to establish a management control agreement between these agencies as to the oversight of security and personnel responsible for computerized criminal history record information [CHRI] and thereby invalidates an existing management control agreement relating to the same subject matter between DISC and the Kansas Bureau of Investigation. Specifically, you inquire as to the validity of the new agreement in light of Kansas statutes, rules and regulations which govern the collection and dissemination of CHRI.

By way of background, we note that federal law, 42 U.S.C. 3771, which was enacted in 1973, required the Law Enforcement Assistance Administration [LEAA], to assure the privacy and security of all criminal history record information collected, stored or disseminated with federal support. Subsequent to enactment of 42 U.S.C. §3771, LEAA regulations (28 C.F.R. Part 20), were adopted to carry out that requirement. The State of Kansas has received funds made available by LEAA subsequent to July 1, 1973, pursuant to the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 *et seq.*, as amended); therefore, Kansas became subject to 28 C.F.R. Part 20 and was required by these regulations to adopt provisions governing the collection, storage, and dissemination of criminal history information.

The Governor of Kansas designated the Kansas Bureau of Investigation as the state agency to plan procedures to comply with 28 C.F.R. Part 20. The plan, known as the State of Kansas Criminal History Record Information Plan, designated the K.B.I. as the criminal justice agency responsible for reviewing and monitoring personnel assignments of DCS, predecessor of DISC, as well as having responsibility for the final decision regarding physical security of the DCS facility and security of its computer information. (Section Six, pgs. 6.0 - 6.2, Kansas Criminal History Record Information Plan, March 16, 1976.) As stated in the plan, this responsibility was vested in the K.B.I. due to its statewide role in privacy and security. Senate Bill 406 of the Session of 1977 was the embodiment of this plan and the precursor of K.S.A. 1983 Supp. 22-4701 *et seq.*, the Criminal History Record Information Act.

K.S.A. 1983 Supp. 22-4705(b), a provision of this Act, states:

"There is hereby established a criminal justice information system central repository for the collection, storage, and dissemination of criminal history record information. The central repository shall be operated by the Kansas bureau of investigation under the administrative control of the director."

In addition, K.S.A. 1983 Supp. 22-4701(d) provides:

"'Criminal justice information system' means the equipment (including computer hardware and software), facilities, procedures, agreements, and personnel used in the collection, processing, preservation, and dissemination of criminal history record information."

From the foregoing statutes, it is clear that the director of the Kansas Bureau of Investigation is vested with a statutory duty to adopt rules and regulations to implement the Criminal History Record Information Act. K.S.A. 22-4704 requires that the director provide rules for the collection and dissemination of criminal history record information, as well as to provide for the security of criminal history information disseminated through the criminal justice information system. As previously noted this information system includes computer hardware and software as well as facilities and personnel, and obviously includes the Division of Information Systems and Computing (DISC).

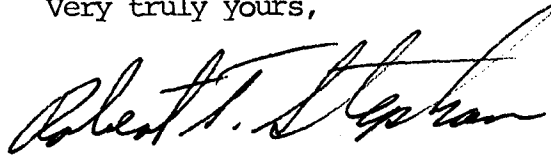
Equally significant for purposes of this opinion, is the fact that the director has been given the authority and responsibility for auditing criminal justice agencies to assure compliance with the Criminal History Record Information Act. The director has responded by adoption and implementation of K.A.R. 10-14-1, which provides for logging of all dissemination of criminal history record information by criminal justice agencies so that an audit may be conducted.

Our research reveals no authority for the proposition that any other person or state agency has the authority to oversee or control the collection, storage, or auditing of dissemination of criminal history record information in Kansas. In light of the foregoing, we believe that the Kansas Bureau of Investigation is the only state agency which has the authority and statutory duty to oversee and control all aspects of the criminal justice information system as it relates to criminal history record information. Such duties necessarily include control over personnel responsible for the handling and dissemination of CHRI, and control of auditing of state agencies within the executive branch of government which store and disseminate CHRI.

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Based upon the foregoing conclusions, it is our opinion that any agreement between the Kansas Highway Patrol and DISC, which purports to place management control over DISC criminal justice information system, pertaining to criminal history record information, in any agency other than the K.B.I., is contrary to law.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Bradley J. Smoot  
Deputy Attorney General

RTS:BJS:may