



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

October 11, 1984

ATTORNEY GENERAL OPINION 84-106

The Honorable Rex B. Hoy
State Representative, 24th District
2801 Johnson Drive
Shawnee Mission, Kansas 66205

Re: Laws, Journals and Public Information -- Records
Open to Public -- Lists of Names and Addresses;
Prohibition Against Commercial Use

Synopsis: As amended by chapter 282, section 5, the provisions of chapter 187, section 11 of the 1984 Session Laws prohibit the selling, giving or receiving of lists of names and addresses derived from public records, for the purpose of selling or offering for sale any property or service to the persons listed therein, subject to three exceptions. Section 6 of chapter 187, as amended by section 3 of chapter 282 of the 1984 Session Laws, further requires that any person who obtains a list of names and addresses certify that: (1) he or she will not use the information for the purpose of selling or offering for sale any property or services, and (2) will not give, sell or otherwise make available the list to another person so that the latter may sell or offer for sale any property or service. Accordingly, a person may not make commercial use of information derived from such lists, either directly or through the sale of the lists themselves. Cited herein: K.S.A. 1983 Supp. 21-3913; 45-201 (both repealed, L. 1984, ch. 187); 74-2012, as amended by L. 1984, ch. 282, §1; L. 1983, ch. 171, §11, L. 1984, ch. 187, §§6, 11; L. 1984, ch. 282, §§3, 5.

*

*

*

The Honorable Rex B. Hoy
Page Two

Dear Representative Hoy:

As State Representative for the 24th District, which is located in Johnson County, you request our opinion on a question concerning the Kansas statutes dealing with open public records. Specifically, you inquire whether the provisions of the statutes prohibit an individual from putting together a list of names and addresses from public records for his or her own use in "sales presentations." Such a situation is different from the sale of the list itself to a third party, who would then make use of the information for commercial purposes.

As originally enacted in 1983, Section 11 of chapter 171 of the session laws for that year stated as follows:

"(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."

In that the language of the section imposed criminal sanctions in the event of a violation, it was placed in the Kansas Criminal Code at K.S.A. 1983 Supp. 21-3913. As enacted, it contained no exceptions to the general prohibition against dissemination of lists of names and addresses for commercial purposes (i.e. selling or offering for sale any property or service).

Although the above statute went into effect on January 1, 1984, the legislature acted to amend it twice during the 1984 session. The first amendment was contained in 1984 House Bill No. 2668, which appears in the session laws at chapter 187. Therein, at section 11, it is stated:

"(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 other than from public records of the division of vehicles obtained under K.S.A. 74-2012 and amendments thereto.

"(b) Violation of this section is a class C misdemeanor." (Emphasis added.)

The underscored language was added, and allowed an exception to the general prohibition for records of the division of vehicles obtained under K.S.A. 1983 Supp. 74-2012.

A second and even more significant change was made later in the 1984 session through the passage of Senate Bill No. 654 (now at L. 1984, ch. 282). Section 11 of 1984 House Bill No. 2668 was amended by Section 5 of chapter 282 to read as follows:

"(a) 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 except:

"(1) Lists of names and addresses from public records of the division of vehicles obtained under K.S.A. 74-2012, and amendments thereto;

"(2) lists of names and addresses of persons licenses, registered or issued certificates or permits to practice a profession or vocation may be sold or given to, and received by, an organization of persons who practice that profession or vocation for membership, informational or other purposes related to the practice of the profession or vocation;

"(3) lists of names and addresses of persons applying for examination for licenses, registrations, certificates or permits to practice a profession or vocation shall be sold or given to, and received by, organizations providing professional or vocational educational materials or courses to such persons for the sole purpose of providing such persons with information relating to the availability of such materials or courses; and

"(4) to the extent otherwise authorized by law.

(b) Violation of this section is a class C misdemeanor."

In addition to the exception for motor vehicles records, two more exceptions were added for professional associations and organizations providing educational or vocational materials to professionals. In addition, K.S.A. 1983 Supp. 74-2012 was amended

by section 1 of chapter 282 to specifically prohibit lists of names and addresses "contained in or derived from" records of the division from being "sold, given or received" except in situations involving vehicle recall or defect announcements, or the issuance of motor vehicle liability insurance policies.

Despite the above amendments, the question of whether an individual could collect material from public records for his own commercial use was still arguably open. In order to put to rest any doubts that such usage was also prohibited, the legislature amended section 6 of chapter 187 through the language of section 3 of chapter 282. (Section 6 was a re-enactment of K.S.A. 1983 Supp. 45-210, which established procedures to be followed by agencies in permitting access to public records.) As now enacted, section 3 contains subsection (c) which states:

"(c) If access to public records of an agency or the purpose for which the records may be used is limited pursuant to section 7 or 11 of 1984 House Bill No. 2668, and amendments thereto, the agency may require a person requesting the records or information therein to provide written certification that:

"(1) The requester has a right of access to the records and the basis of that right; or

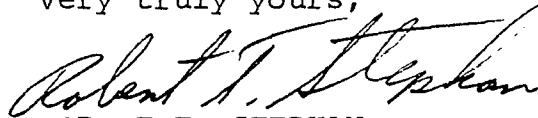
"(2) the requester does not intend to, and will not: (A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person who resides at any address listed; or (B) sell, give or otherwise made available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed." (Emphasis added.)

By the underscored language above, the legislature made clear that both the use by an individual of a list of names and addresses and the dissemination of the list to others are prohibited, for the "requester" must certify, in writing, that he or she "does not intend to, and will not," perform either act for the purpose of selling or offering for sale property or services. Accordingly, custodians of public records are within the scope of the statutes when they require individuals to certify that

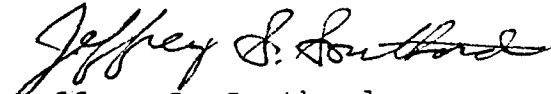
they will not use information derived from public records for commercial purposes.

In conclusion, as amended by chapter 282, section 5, the provisions of chapter 187, section 11 of the 1984 Session Laws prohibited the selling, giving or receiving of lists of names and addresses derived from public records, for the purpose of selling or offering for sale any property or service to the persons listed therein, subject to three exceptions. Section 6 of chapter 187, as amended by section 3 of chapter 282 of the 1984 Session Laws, further requires that any person who obtains a list of names and addresses may be registered to certify that: (1) he or she will not use the information for the purpose of selling or offering for sale any property or services, and (2) will not give, sell or otherwise make available the list to another person so that the latter may sell or offer for sale any property or service. Accordingly, a person may not make commercial use of information derived from such lists, either directly or through the sale of the lists themselves.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw