



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 84 - 130

David R. Heger
Assistant Miami County Attorney
P. O. Box 403
Paola, Kansas 66071

Re: Crimes and Punishment -- Crimes Affecting Public
Trust -- Unlawful Use of Names and Adresses Derived
from Public Records

Synopsis: Section 5 of chapter 282 of the 1984 Session Laws of Kansas prohibits a person from receiving any list 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. However, lists of names derived from public records may be used for purposes other than that prohibited by the statute. Thus, a person may use names derived from public records for the purpose of publishing a plat book in which the legal descriptions of property and the owners' names are given, without violating section 5 of chapter 282. Cited herein: L. 1984, ch. 282, §5.

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Dear Mr. Heger:

You seek an opinion concerning the provisions of section 5 of chapter 282 of the 1984 Session Laws of Kansas, which 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 services to persons listed. You

explain that a person seeks to compile a document identifying the legal description of each parcel of real property in Miami County and the name of the current owner or owners thereof. This person then will use the information to prepare a plat book of Miami County, which will be offered for sale to the general public. You question whether this use of the information is prohibited by the new law.

Section 5 of chapter 282 provides:

"(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 . . . [certain lists of names and addresses not relevant to this inquiry]; and

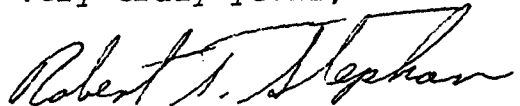
"(4) to the extent otherwise authorized by law.


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

This statute clearly prohibits a person from receiving any list 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. The statute does not, however, prohibit a person from receiving a list of names derived from public records, if that list is not used for the proscribed purpose of selling or offering for sale any property or services to the persons listed.

In the situation you describe, it does not appear that the person seeking to compile "a list" of the real property owners in Miami County seeks to receive such information for the purpose of selling or offering for sale any property or service to these persons who will appear on that list. Consequently, under the circumstances of this particular inquiry, we are of the opinion that the activity sought to be undertaken is not proscribed under section 5 of chapter 282.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Rodney J. Bieker
Assistant Attorney General


statutes in question do not grant the authority to prosecute such misdemeanors to a board of county commissioners. That authority clearly resides in the office of the county or district attorney.

Kansas law has long recognized that the county or district attorney is the chief law enforcement official in his jurisdiction and that a "criminal proceeding is a matter of state concern and the control of it is in the county attorney." See Sampson v. Rumsey, 1 Kan.App.2d 191, 197 (1977). The Kansas Supreme Court has recently said: "The county attorney is the representative of the state in criminal prosecutions and as such he controls them." State ex rel. Rome v. Fountain, 234 Kan. 943, 947 (1984); and see, State v. Pruett, 213 Kan. 41, Syl. ¶1 (1973). Moreover, we note that K.S.A. 19-702, as amended by L. 1984, ch. 100, §1, provides that:

". . . it shall be the duty of the county attorney to appear in any court having jurisdiction within the county and prosecute or defend on behalf of the people all actions and proceedings, civil or criminal, in which the state or the county is a party or interested." (Emphasis added.)

Further, K.S.A. 22a-104, as amended by L. 1984, ch. 100, §4, provides that any power or duty now conferred or imposed by law upon all county attorneys within their respective counties shall be exercised or performed by district attorneys within their respective districts.

Thus, it is our opinion that the statutes in question make available two possible methods of ensuring compliance with county zoning or subdivision regulations. The first method is to make violations of such regulations misdemeanors and to seek prosecution and the imposition of fines for such violations. The second method is to authorize the board of county commissioners to seek civil remedies (such as an injunction) to prevent violation of zoning regulations. The responsibility for prosecuting the misdemeanor offenses lies with the county or district attorney, as being a matter in which the county is interested. Any civil remedies which the board of county commissioners may wish to pursue should be sought in the name of the board through the office of the county counselor.

Very truly yours,

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mary F. Carson
Assistant Attorney General