



STATE OF KANSAS

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January 2, 1985

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ATTORNEY GENERAL OPINION NO. 85- 2

Joseph W. Snell, Executive Director
Kansas State Historical Society
120 West 10th Street
Topeka, Kansas 66612

Re: Labor and Industries -- Act Against Discrimination --
Commission on Civil Rights; Confidential Nature of
Investigative Files

Laws, Journals and Public Information -- Public Records
Preservation -- Records Received by State Archives;
Confidentiality Maintained

Synopsis: Information gathered in the course of an investigation
by the Kansas Commission on Civil Rights is confidential,
pursuant to K.S.A. 44-1005, as amended by L. 1984,
ch. 186, §1(e). While files of such investigations
are subject to retention under the Public Records
Preservation Act, K.S.A. 45-401 et seq., the confidential
nature of the files is required to be maintained by
the archivist. Cited herein: K.S.A. 44-1005, as amended
by L. 1984, ch. 186, §1(e); K.S.A. 45-405, as amended by
L. 1984, ch. 188, §3; K.S.A. 45-407; 45-408; L. 1984,
ch. 282, §4; K.A.R. 1983 Supp. 21-43-6.

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Dear Mr. Snell:

As Executive Director of the Kansas State Historical Society you
have requested an opinion on the legality of opening to public
scrutiny certain records presently maintained by the Society in
its role as the official state archivist (K.S.A. 45-405, as
amended by L. 1984, L. 188, §3). The records in question are
investigative files created by the Kansas Commission on Civil

Rights (KCCR). You inform us that in 1983, pursuant to K.S.A. 45-408, the KCCR asked the State Records Board to authorize the disposition of these investigative case files. The KCCR was of the opinion that the records should be destroyed because of their confidential nature. On May 23, 1983, the state records board made the following decision regarding these records:

"These records are to be transferred to the State Historical Society (state archives) until the office of the Attorney General has made a determination as to the legality of opening them to the public scrutiny. If not determined to be a closed public record or of possessing enduring historical value, the records may be destroyed on a continuing basis three calendar years after the completion of the investigation, unless future state law requires longer retention." See Records Disposition Schedule No. 53-2-61.

You now seek an opinion from this office on whether such records may be made available to public access.

K.S.A. 44-1005, as amended by L. 1984, ch. 186, §1(e), provides that members of the KCCR and its staff "shall not disclose what has occurred" in the course of its efforts toward conciliation after a probable cause finding has been made on a complaint. In addition, K.A.R. 1983 Supp. 21-43-6 provides:

"Non-disclosure of facts. The commission shall not disclose what has transpired in the course of its endeavors at conciliation and persuasion, per K.S.A. 44-1005. However, when executed, the final terms of a conciliation agreement may be disclosed. No officer, agent or employee of the commission shall make public with respect to a particular person without his consent information from reports obtained by the commission except as necessary to the conduct of further commission proceedings."

The Kansas Supreme Court has considered the provisions of K.S.A. 44-1005 and concluded that, pursuant to that section:

". . . The Kansas Commission on Civil Rights is required to treat any and all information gathered in the course of an investigation by the Commission as confidential." Atchison, T. & S.F. Rly. Co. v. Lopez, 216 Kan. 108, 122, Syl. ¶4 (1975). (Emphasis added.)

Thus, it is clear that the court regards the relevant language of K.S.A. 44-1005 (which remains substantially unchanged by the 1984 amendments) as restricting disclosure of all material gathered by the KCCR in the course of an investigation or effort at conciliation. See also, Kansas Commission on Civil Rights v. Sears, Roebuck & Co., 216 Kan. 306, 319 (1975) and Atchison, T. & S.F. Rly. Co. v. Commission on Civil Rights, 215 Kan. 911, 919-920 (1974).

Therefore, those records maintained by the KCCR which are covered by K.S.A. 44-1005, as amended, are to be regarded as confidential and are not available for public inspection. The Kansas Open Records Act (L. 1984, ch. 282, §4), provides that a public agency shall not be required to disclose:

"(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure."

In our opinion, disclosure of the records in question is specifically prohibited by law and such records cannot be made available to public inspection, regardless of the effect of the open records act.

We note at this juncture that K.S.A. 45-407 provides that records, access to which is restricted, shall remain subject to such restrictions upon deposit with the state archivist. The statute provides in relevant part:

"(a) All government records deposited subsequent to adoption of this act in the state archives shall remain subject to any current state or federal statutes, or administrative regulations authorized by statute, which require public access or restrict public access to the records while retained by the state or local agency or the branch of state government making the deposit. The state or local agency or the branch of state government making the deposit may require continued application to government records deposited in the state archives of any discretionary restrictions on public access which are authorized by statute or by administrative regulations authorized by statute, if such requirements are specified at the time of the deposit. No fees shall be charged for the examination of government records held by the state archives.

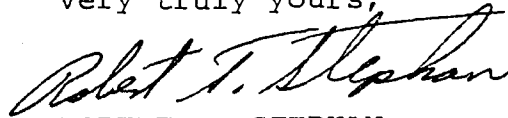
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"(d) Statutes or administrative regulations authorized by statute restricting public access to certain types of records shall not prohibit the state archivist or authorized representatives of the state archivist from examining any government records held by a state or local agency in order to prepare comprehensive inventories containing general information about the nature, scope, contents and location of each record series, or in order to assist in properly arranging, storing and preserving government records with enduring value. No confidential information found in such restricted government records shall be revealed to any person by the state archivist or by representatives of the state archivist. Violation of this subsection shall be punishable as a class B misdemeanor."

This statute clearly permits the archivist to maintain confidential records as long as the archivist may deem necessary.

We conclude therefore that the investigative records of the Kansas Commission on Civil Rights currently held by the state archivist are not available for public inspection if they fall under the terms of K.S.A. 44-1005, as amended.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary F. Carson
Assistant Attorney General

RTS:JSS:MFC:crw