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April 11, 1985

ATTORNEY GENERAL OPINION NO. 85- 34

William P. Hanzlick, Director
Kansas Fish and Game Commission
Box 54A, Rural Route 2
Pratt, Kansas 67124

Re: Crimes and Punishments--Crimes Affecting Public
Trusts--Unlawful Use of Names Derived from Public
Records

Synopsis: Pursuant to the provisions of K.S.A. 1984 Supp. 21-3914,
the Kansas Fish and Game Commission may not provide a
list of persons holding hunting permits to a conser-
vation organization which would use the list to solicit
permit holders to purchase memberships in the organization.
Cited herein: K.S.A. 1984 Supp. 21-3914.

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Dear Mr. Hanzlick:

You request our interpretation of K.S.A. 1984 Supp. 21-3914.
Specifically, you ask whether the Fish and Game Commission may
provide a list of persons holding permits to hunt wild turkeys in
Kansas to an organization which promotes conservation and man-
agement of wild turkeys. You indicate that the organization
will use the list to solicit permit holders to purchase member-
ships in the organization.

K.S.A. 1984 Supp. 21-3914 provides 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 licensed, 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.

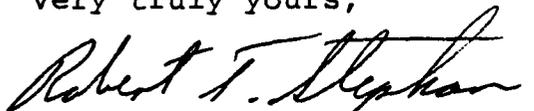
"(b) Violation of this section is a class C misdemeanor."
(Emphasis added.)

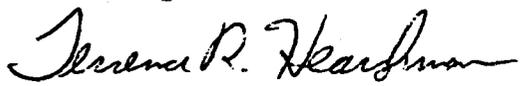
As the underscored portion of the statute indicates, the Fish and Game Commission may not give a list derived from public records to a person who intends to use it for the purpose of selling or offering for sale (to persons listed) any property or service. You indicate that the organization requesting the subject list of permit holders provides a service, i.e. it engages in conservation advocacy and provides educational programs and materials to members in return for their annual dues. Therefore, in our opinion the sale of memberships in such an organization constitutes the sale of a service, and the Fish and Game Commission is barred from supplying the subject list under the provisions of K.S.A. 1984 Supp. 21-3914.

Although what has been said above is dispositive of the question which you have posed, we are compelled to address your suggestion that paragraph (2) of subsection (a) of K.S.A. 1984 Supp. 21-3914 may provide a basis which would allow disclosure of the subject list. That paragraph allows the giving and receipt of a list of persons licensed to practice a profession where the list is to be used for "membership" purposes of a professional organization, and is clearly an exception to the first paragraph of subsection (a) of K.S.A. 1984 Supp. 21-3914 which defines the crime of unlawful use of names derived from public records.

It is a well-established rule of statutory construction that a strict interpretation must be applied to statutory exceptions. Jackson v. City of Kansas City, 235 Kan. 278, 286 (1984). Accordingly, paragraph (2) of subsection (a) of K.S.A. 1984 Supp. 21-3914 must be strictly construed to apply only to lists of persons licensed, registered or issued certificates or permits to practice a profession or vocation, and may not be construed to apply to a list of persons holding permits to hunt wild turkeys.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


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Assistant Attorney General

RTS:JSS:TRH:jm