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ATTORNEY GENERAL OPINION NO. 87- 73

Charles V. Hamm
Special Assistant to the Secretary
Kansas Department of Health and Environment
Forbes Field
Topeka, Kansas 66620-0110

Re: Laws, Journals and Public Information -- Records
Open to Public -- Lists of Names and Addresses
Derived from Public Records

Crimes and Punishments -- Kansas Criminal Code;
Prohibited Conduct; Crimes Affecting Public Trusts
-- Unlawful Use of Names Derived from Public Records

Synopsis: K.S.A. 1986 Supp. 21-3914(a) and K.S.A. 45-220(c)
provide that no list of names and addresses
obtained from public records can be used for
solicitation purposes. This limitation on the use
of such information applies not only to
individuals, but also to the name and addresses of
businesses which are made public record. Cited
herein: K.S.A. 1986 Supp. 21-3914; K.S.A.
45-215; 45-220.

* * *

Dear Mr. Hamm:

On behalf of Jack D. Walker, M.D., Secretary of the Kansas
Department of Health and Environment, you request our opinion
on the interpretation of K.S.A. 1986 Supp. 21-3914
concerning use of names derived from public records.

The Department of Health and Environment (Department) regulates and licenses entities providing adult care, child care, and other services in this state. You state that the Department has received requests from vendors for a list of names and addresses of these licensed facilities. It is implied in your letter that these vendors would use the list of names and addresses to contact the providers to offer goods and services for sale. You ask whether K.S.A. 1986 Supp. 21-3914 applies to businesses as well as individuals, thus prohibiting the Department from providing such lists to vendors.

Under the Kansas Open Records Act (KORA), K.S.A. 45-215 et seq., a public record is to be open for inspection unless it falls within one of the thirty-five categories of records which are not required to be disclosed or the disclosure of which is specifically prohibited by statute. K.S.A. 45-221(a). The records in question do not fall within any of these exceptions and therefore must be made available to the public.

There are, however, limits placed on the use of information derived from public records. One of the procedures for gaining access to public records is K.S.A. 45-220(c):

"[T]he agency may require a person requesting the records or information therein to provide written certification that:

. . .

"(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 listed or to any person who resides at any address listed; or (B) sell, give or otherwise make 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).

K.S.A. 1986 Supp. 21-3914(a) provides in pertinent part:


"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" (Emphasis added).


Violation of this statute is a class C misdemeanor. K.S.A. 1986 Supp. 21-3914(b). The statute also lists several exceptions which allow lists obtained from public records to be used for certain commercial purposes. K.S.A. 1986 Supp. 21-3914(a).

It is suggested that K.S.A. 1986 Supp. 21-3914(a) should not apply to a list of names and addresses of business entities because a business does not have the same privacy interests in its name and address as does a private individual. However, K.S.A. 1986 Supp. 21-3914(a) and K.S.A. 45-220(c) provide that any list of names and addresses obtained from public records cannot be used for solicitation purposes. Legislative research has revealed nothing that would indicate the legislature intended to make any distinction between a list of names and addresses of individuals and businesses. In addition, it would seem that if the legislature had intended to allow names and addresses of businesses obtained from public records to be used to solicit those businesses, an exception would have been so provided in K.S.A. 1986 Supp. 21-3914(a). Therefore, we must conclude that the prohibition against using lists compiled from public records for commercial purposes applies not only to individuals, but also to the names and addresses of businesses which are made public record.

In summary, it is our opinion that vendors should not be allowed to obtain information from the Department's records for the purpose of soliciting businesses who are regulated and licensed by the Department.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Rita L. Noll
Assistant Attorney General