

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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August 22, 1988

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ATTORNEY GENERAL OPINION NO. 88- 117

Lewis C. Carter, Clerk
Kansas Supreme Court
Kansas Judicial Center
Topeka, Kansas 66612

Re: Laws, Journals and Public Information -- Records
Open to Public -- Documents Concerning Attorneys
who Fail to Timely Pay the Registration Fee

Synopsis: The letter of notice sent by the Clerk of the
Supreme Court to attorneys who fail to register and
pay the fee for renewal of their license by July 1
each year, and the return receipt are public
records as that term is defined by the Kansas open
records act (KORA), K.S.A. 45-215 et seq.
These documents are subject to mandatory disclosure
as the letter constitutes correspondence intended
to give notice of an action relating to a
regulatory and enforcement responsibility of the
Clerk's office. K.S.A. 1987 Supp. 45-221(a)(14).

The list of attorneys certified by the clerk to the
Supreme Court who have failed to register and pay
the fee, and an order of the Supreme Court
suspending an attorney from the practice of law for
that reason are also public records which must be
disclosed to the public upon request. Cited
herein: K.S.A. 45-215; 45-216; 45-217; K.S.A. 1987
Supp. 45-221.

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Dear Mr. Carter:

As Clerk of the Kansas Supreme Court, you ask our opinion concerning the Kansas Open Records Act (KORA), K.S.A. 45-215 et seq. Your office is charged with the responsibility of administering the Supreme Court Rules governing the registration of attorneys in the State of Kansas. Supreme Court Rule No. 208(a) requires attorneys to annually "on or before the first day of July, register with the Clerk of the Appellate Courts upon such form as the Clerk shall prescribe" and to pay the annual registration fee. Paragraph (e) provides as follows:

"The Clerk of the Appellate Courts shall mail a notice to any attorney who has failed to comply with subsection (a) that his right to practice law will be summarily suspended thirty days following the mailing of notice if such registration fee is not paid within that time. The notice shall be forwarded to his last known address by certified mail, return receipt requested. The Clerk shall certify to the Supreme Court the names of attorneys who fail to register and pay said fee within said period of time. Thereupon, the Court shall issue an order suspending said attorneys from practice of law in this state and the Clerk shall mail a copy of the order to the administrative judge of the attorney's district." 235 Kan. CXXVII.

You ask whether your office must, pursuant to the KORA, disclose upon request copies of the registered letters giving notice to attorneys that their annual registration and fee are overdue, the return receipt to the clerk's office, and the certified list of attorneys who failed to register and pay their annual license fee within the allotted time period.

The KORA provides that public records of public agencies must "be open for inspection by any person. . . ." K.S.A. 45-216(a). The office of Clerk of the Appellate Courts is a public agency as it meets the definition stated in K.S.A. 45-217(e)(1):

"'Public agency' means the state or any political or taxing subdivision of the state, or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by public funds appropriated by the state or by public funds of any political or taxing subdivision of the state."

A "public record" is "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency." K.S.A. 45-217(f)(1). Thus, the notice, return receipt, and certified list are public records. Not all public records, however, are required to be open for public inspection. K.S.A. 1987 Supp. 45-221(a)(1) provides that records, the disclosure of which is prohibited or restricted by law, are not subject to disclosure under the KORA. In addition, K.S.A. 1987 Supp. 45-221(a)(2)-(36) lists records which a public agency has discretion to keep confidential.

We are not aware of any state or federal law or Supreme Court Rule which prohibits disclosure of the documents in question. However, one of the exceptions to mandatory disclosure states:

"Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual." K.S.A. 1987 Supp. 45-221(a)(14).

The notice sent to attorneys who failed to renew by July 1 is "correspondence between a public agency and a private individual." The letter from your office provides in part:

"With the above in mind and in compliance with Supreme Court Rule 208 you are hereby notified that if payment is not received within thirty (30) days following the mailing of this letter your right to

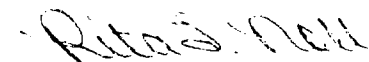
practice law in the State of Kansas will be summarily suspended." (Letter attached).

Attorneys who are delinquent in their renewal of license are still licensed to practice law in Kansas. An attorney is not suspended from practicing law for failure to renew her license until an order of suspension is issued by the Supreme Court. However, we must conclude that the letter of delinquency constitutes "notice of action, policy or determination relating to any regulatory . . . or enforcement responsibility of the public agency," as it gives notice of a summary proceeding if the attorney does not effect renewal. Therefore, the letter to the attorney, the return receipt, and the Supreme Court's order suspending an attorney for failure to renew her license are public records subject to mandatory disclosure.

You also ask whether the list you compile and certify to the Supreme Court of attorneys who have failed to register and pay the renewal fee must be open to the public. In our opinion, this list must be disclosed upon request as it is a public record. We are not aware of any law which closes this document, and none of the exceptions in K.S.A. 1987 Supp. 45-221(a)(2)-(36) appear to apply.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
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