



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 88- 164

The Honorable Joan Finney
State Treasurer
900 Jackson, Suite 201
Topeka, Kansas 66612-1235

Re: Public Health -- Uniform Vital Statistics Act --
Disclosure of Records; Direction to Return Forms to
State Agencies

Personal and Real Property -- Disposition of
Unclaimed Property Act -- Examination of Records;
State Agency Cooperation

Synopsis: K.S.A. 58-3924 does not by its terms mandate the disclosure of confidential vital statistic information to the state treasurer. However, K.S.A. 1987 Supp. 65-2422(a) and (e) allow the Secretary of the Kansas Department of Health and Environment (KDHE) to promulgate regulations, containing the mandated safeguards, authorizing the transfer of such vital statistic information to the state treasurer. To date, the secretary has not adopted such a regulation.

Pursuant to K.S.A. 65-2418, the legislature has provided the secretary of KDHE with the authority and discretion to charge a fee for the transfer of vital statistic information. K.A.R. 28-17-6 implements that authority and sets forth the fees for such transfers. Unless the secretary of KDHE promulgates a specific exemption or has previously interpreted K.A.R. 28-17-6 to allow fees to be

waived, the state treasurer must pay the fees set forth in that regulation.

Should the state treasurer obtain vital statistic information, the limitations contained in the enabling authority protect the information from all uses not connected with the purposes for which it was obtained. Cited herein: K.S.A. 58-3901; 58-3920; 58-3921, as amended by L. 1988, ch. 356, § 179; K.S.A. 1987 Supp. 58-3922; K.S.A. 58-3924; 65-2401; 65-2418; K.S.A. 1987 Supp. 65-2422; K.S.A. 75-3701; K.A.R. 28-17-6; 28-17-7.

* * *

Dear Mrs. Finney:

You request our opinion regarding the furnishing of vital statistic records to your office. Your office seeks to obtain these records in order to aid location of owners of unclaimed property. You specifically ask that we address the following:

1. Whether the language of K.S.A. 58-3924, either standing alone or in conjunction with any provision of K.S.A. 1987 Supp. 65-2422, authorizes the State Treasurer's Office access to vital records held by the Kansas Department of Health and Environment (KDHE) pursuant to K.S.A. 65-2401 et seq.;
2. if the State Treasurer's office has access, whether an authorizing regulation or other procedural condition is necessary to implement such access;
3. if the State Treasurer's office has access, whether the State Treasurer's office is limited in any way in the use of such information; and
4. if the State Treasurer's office has access, whether KDHE is required to impose fees and charges for records searches, whether KDHE is required to waive fees and charges for records searches, or whether the imposition or waiver of fees and charges for records searches is within the discretion of KDHE.

K.S.A. 1987 Supp. 65-2422(a) provides:

"[I]t shall be unlawful for any officer or employee of the state to disclose data

contained in vital statistical records except as authorized by this act and the secretary. . . ."

Subsection (e) provides that:

"Subject to the provisions of this section the secretary may direct local registrars to make a return upon the filing of birth, death and stillbirth certificates with them of certain data shown thereon to federal, state or municipal agencies. Payment by those agencies for the services may be made through the state registrar to local registrars as the secretary directs."

K.S.A. 1987 Supp. 65-2422 prohibits the dissemination or inspection of these records unless the applicant has a direct interest in the matter recorded or except as authorized by this act and the secretary of health and environment. See also K.A.R. 28-17-7. The state treasurer is not an applicant with a direct interest in the matter recorded. Thus, the state treasurer may obtain these records only if such access is authorized by the act and the secretary.

Attorney General Opinion No. 86-145 addressed the question of whether vital statistic data could be supplied to or shared with the Kansas Department of Revenue. It was our opinion that while the act did not prohibit KDHE from sharing the name, date of birth, residence, or social security number of a deceased Kansas citizen with the Department of Revenue, neither did it specifically allow it. We thus opined that if the secretary of KDHE promulgated a regulation containing the mandated safeguards, transfer of vital statistic information could then be made to the Department of Revenue.

Local registrars may disclose records of vital statistics only where there is a law authorizing such disclosure. See K.A.R. 28-17-7. Attorney General Opinions No. 84-101 and 79-95 discuss the necessity for enactment of a specific administrative regulation. While K.S.A. 1987 Supp. 65-2422(e) permits the transfer of vital statistic information to state agencies, K.S.A. 65-2401 et seq. does not specifically authorize transfer to the state treasurer. Thus, specific authorization must be legislatively enacted or promulgated by KDHE. The issue therefore becomes whether K.S.A. 58-3924 specifically authorizes or mandates disclosure of vital statistics to the state treasurer.

K.S.A. 58-3901 et seq. provides for the disposition of unclaimed property. K.S.A. 58-3920 allows a person claiming abandoned property to make application to the state treasurer. The state treasurer then considers the claim pursuant to K.S.A. 58-3921, as amended. If any person is aggrieved by the decision or lack of action by the state treasurer, K.S.A. 1987 Supp. 58-3922 provides a procedure whereby the aggrieved claimant may file a denovo action in the appropriate district court.

The language contained in K.S.A. 58-3924 provides the mechanism whereby the state treasurer may conduct fact finding in order to determine the validity of a claim:

"The state treasurer may within one hundred twenty (120) days after receiving the report required under K.S.A. 58-3912 and upon reasonable notice examine all records pertaining to abandoned property of any person if the state treasurer has reason to believe that such person has failed to report property that should have been reported pursuant to this act. Audits and inspections made pursuant to this act shall be conducted only by employees of this state, duly authorized by the state treasurer. The provisions of this section shall not be deemed to authorize audits or inspections of supervised commercial banks, trust companies, savings and loan associations, credit unions, supervised licensed lenders, and insurance companies with home offices located in this state. All state agencies shall provide the state treasurer with such information as is necessary for carrying out the provisions of this act." (Emphasis added.)

This enactment does not specifically discuss vital statistic records. It allows the state treasurer to examine records pertaining to abandoned property. Vital statistic records do not in and of themselves pertain to abandoned property. Rather, vital statistic information pertains to personal information. The final sentence of K.S.A. 58-3924 allows the state treasurer limited access to certain information as necessary for carrying out the provisions of this act. While vital statistic information might be helpful in ascertaining

ownership of abandoned property, it has not historically been necessary to obtain such information in order to carry out the provisions of the unclaimed property act. Moreover, K.S.A. 58-3924 does not negate the confidential protections given vital statistic records.

It is therefore our opinion that K.S.A. 59-3924 does not by its terms mandate the disclosure of vital statistic information to the state treasurer. Thus, pursuant to K.S.A. 1987 Supp. 65-2422(a) and (e), access to that information must be specifically authorized by regulations promulgated by the secretary of KDHE or pursuant to other specific legislative authority.

Your second question concerns fee payment. You note that fees obtained for vital statistic information transfers are ultimately deposited into the state's general fund.

K.S.A. 65-2418 provides the secretary of KDHE with the authority to establish fees:

"The secretary shall fix and charge the fees, if any, to be paid for certified copies of certificates or for search of the files or records when no certified copy is made. Fees for certified copies of certificates shall be fixed by rules and regulations of the secretary of health and environment. The secretary of health and environment may provide by rules and regulations for exemptions from such fees."

Pursuant to the authority to fix and charge fees, or to provide for exemptions by rule and regulation, the secretary has promulgated K.A.R. 28-17-6:

"[T]he state registrar shall furnish certified copies of certificates or parts of certificates upon request by an authorized applicant and payment of the required fee. For making and certifying such copies, the state registrar shall receive a fee of \$6.00 for the first copy and \$3.00 for each additional copy of the same record requested at the same time. For any search of the files and records when no certified copy is made, the state registrar shall be entitled to collect

from the applicant a fee of \$4.00 for each five year period for which a search is requested, or for each fractional part of that period of years. The state registrar shall also be entitled to collect a fee of \$4.00 for any search of the files necessary for preparing an amendment to a standard certificate already on file, due to a change in name of an adopted person or of a person whose name has been legally changed.

For non-certified copies of certificates or parts of certificates requested for statistical research purposes, the state registrar shall determine the fee on the basis of costs for providing those services and prescribe the manner in which those costs are to be paid." (Emphasis added.)

K.S.A. 1987 Supp. 65-2422(e) allows the secretary of KDHE to return certain data to federal, state or municipal agencies. State agencies are not defined in this act. (But see K.S.A. 75-3049 which defines state agency to include any state office or officer.) In our opinion the state treasurer's office is a state agency for purposes of allowing the secretary of KDHE to authorize the transfer of vital statistic information to the state treasurer. The same authority permitting transfers to state agencies also permits a fee to be charged to state agencies. K.S.A. 65-2418 authorizes regulations establishing fees and K.A.R. 28-17-6 implements that authority. Thus, the secretary of KDHE has the authority to charge a fee for a transfer of vital statistic information to the state treasurer.

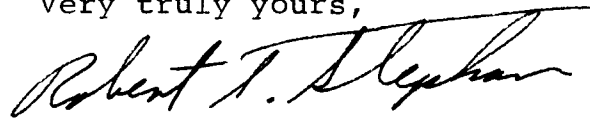
While the secretary of KDHE has the authority to allow fee payment exemptions, K.A.R. 28-17-6 does not appear to specifically exempt the state treasurer. Further, courts give great weight to an agency's interpretation of its own rules and regulations. See Udall v. Tallman, 380 U.S. 1, 85 S.Ct. 792, 13 L.Ed.2d, 616 (1964); McClanahan v. Mulcrune, 636 F.2d 1190 (10th Circ. 1980), Gilbert Cent. Corp. v. Kemp, 637 F. Supp. 843 (D. Kan. 1986); Hemry v. State Board of Pharmacy, 232 Kan. 83 (1982). See also 2 Am.Jur.2d Administrative Law, § 306 (1962). New exemptions to fee payment requirements must be granted pursuant to prospective regulatory action or legislative

authority. Absent an existing agency interpretation that allows exemption from the fee payment provisions of K.A.R. 28-17-6, the state treasurer must pay the fees established by that regulation.

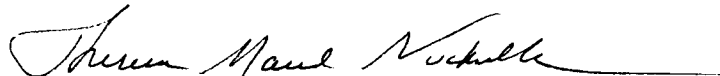
Your final question concerns use of vital statistic information by the office of state treasurer. Such information would be transferred to the state treasurer pursuant to K.S.A. 1987 Supp. 65-2422(e), K.S.A. 58-3924 and some as yet nonexistent specific authority permitting such a transfer. Use of that information would thus be limited by any restrictions contained in or implied from those authorities.

K.S.A. 1987 Supp. 65-2401 et seq. protects disclosure of vital statistic records. K.S.A. 58-3901 et seq. allows the state treasurer to take certain actions relating to unclaimed property. Use of vital statistic information received by the state treasurer must therefore be used for the purposes set forth by authority granting access to the information. It is our opinion that, should the state treasurer obtain copies of vital statistic information, the confidential nature of the information protects it from all other uses not connected with the purposes for which it was obtained.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General

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