



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 47

John M. Duma
Chief Deputy County Counselor
Wyandotte County
710 North 7th Street
Kansas City, Kansas 66101

Re: Laws, Journals and Public Information -- Records
Open to Public -- Exception to Disclosure

Crimes and Punishment -- Kansas Criminal Code;
Crimes Affecting Public Trust -- Unlawful Use of
Names Derived from Public Records

Synopsis: K.S.A. 21-3914 and K.S.A. 1988 Supp. 45-220 limit
the use of information obtained from public records
so as to prohibit commercial solicitation of
persons whose names and addresses are of record.
Using information from county assessment, appraisal
and tax records and maps to produce "microfiche
ownership products and maps" is not prohibited. In
this case, names and addresses taken from public
records are not used to solicit those persons to
purchase property or services; rather, they are
used to produce an item that provides the same
information which is available to the public.
Cited herein: K.S.A. 21-3914; 45-215; 45-220;
K.S.A. 1988 Supp. 45-221.

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Dear Mr. Duma:

On behalf of Wyandotte County, you have asked our opinion concerning the Kansas Open Records Act. Specifically, you ask whether state law would be violated if the county complied with a records request it has received.

We understand that the county has received a request for access to certain county files: assessment file, which contains the values, parcel numbers, and legal description of property in the county, and the mailing address of the owner; appraisal file, listing property characteristics; tax file, including tax amounts; and the assessor's tax/parcel maps. A company wishes to obtain this information to produce a "microfiche ownership product" and printed or microfiche maps. The company informs us that the ownership product would contain information as to parcels of land in Wyandotte county, including parcel number, owner name and address, property location and characteristics, and assessed values. The microfiche would be available in several sequences: parcel number, street name, owner name, commercial and industrial use, vacant land, and absentee owner. We are also told by the company that they sell their products to real estate salespersons for use in their profession. In this manner, realtors would not be required to go to the courthouse each time they needed information, as such would be available in their offices if they purchased the products.

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 whose disclosure is specifically prohibited by statute. K.S.A. 1988 Supp. 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 obtaining 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."

Furthermore, apart from certain exceptions not relevant to this discussion, K.S.A. 21-3914(a) provides:

"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. . . ."

Violation of this statute is a class C misdemeanor. K.S.A. 21-3914(b). The question presented is whether disclosure of county records to the private company for the purpose of producing the microfiche ownership product and maps would violate these statutes.

This office has previously stated that neither a person who requests a record, nor a third party who obtains the information from a "requestor," may use a list of names and addresses derived from public records for commercial purposes. See Attorney General Opinions No. 84-106 and 85-34. In Attorney General Opinion No. 86-1, we were asked whether either the publication by a newspaper of the names and addresses of new customers of the city water department, or providing the same information to a "newsletter service" which would convey those names to its subscribers as sales prospects, was prohibited by the KORA. We were of the opinion that the indirect commercial purpose of the newsletter service was within the type of activity the statutes intended to prohibit, while inclusion of the same list in the newspaper did not violate K.S.A. 21-3914. The distinction to be drawn is that the purpose of the newsletter service was to provide a

list of persons for its subscribers to solicit, while the local newspaper published the list as a matter of public interest.


In Attorney General Opinion No. 86-39 we were asked whether it would be unlawful to obtain names and addresses from the tax roles to produce maps showing land ownership in Johnson County. We opined as follows:


"While selling maps to the public is a commercial activity, the names and addresses obtained from the public records are not used to solicit those persons, but are used for informational purposes to determine land ownership and location. While it is possible that information from the maps could be combined with other materials in making solicitations, the same is true of lists published in a newspaper of general circulation. In either case, the material for commercial usage is too indirect to invoke the provisions of K.S.A. 21-3914, which, as a criminal statute, must be narrowly construed."

K.S.A. 21-3914 and K.S.A. 1988 Supp. 45-220 state that names taken from public records cannot be used "for the purpose of selling or offering for sale any property or service to persons listed therein. . . ." These statutes limit the use of information obtained from public records to prohibit solicitation of persons whose names and addresses are public record. In the situation you submit, names and addresses of persons are among the information acquired from public records to produce compact records regarding property in Wyandotte county to aid realtors. As in Attorney General Opinion No. 86-39, while sale of the products is a commercial activity, the names and addresses obtained from the public records are not used to solicit those persons, but are used for informational purposes. The same information that realtors could purchase on microfiche is available to realtors at the courthouse. Therefore, we conclude that granting access to

the records in question would not violate K.S.A. 21-3914 or
K.S.A. 45-220.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


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