



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 107

Steve Kraushaar
Marshall County Attorney
Courthouse
Marysville, Kansas 66508

Re: Counties and County Officers -- County
Commissioners; Powers and Duties -- Access to
Personnel Files

Counties and County Officers -- Sheriff -- Deputies
and Undersheriffs; Personnel Files

Laws, Journals and Public Information -- Records
Open to Public -- Certain Records Not Required to
be Open; Personnel Records, Sheriff's Office

Synopsis: The county sheriff may discretionarily choose to
disclose personnel records maintained and kept by
the sheriff, subject to the exceptions contained in
K.S.A. 1988 Supp. 45-221(a)(4), as amended. Cited
herein: K.S.A. 19-212 Sixth; 19-805; 19-4301;
19-4403; 25-101; 45-215; 45-217; K.S.A. 1988 Supp.
45-221, as amended by L. 1989, ch. 154, § 1.

* * *

Dear Mr. Kraushaar:

As Marshall County Attorney you request our opinion concerning
whether the board of county commissioners can obtain and
review personnel files of the county sheriff, undersheriff and
deputies. We assume that these personnel files contain the
types of information ordinarily found in personnel files;

applications, references, background information, employee evaluations, and employer's comments.

K.S.A. 45-215 et seq. contain the Kansas open records act (KORA). The records of public entities are subject to KORA, with certain exceptions, unless otherwise provided by law. K.S.A. 1988 Supp. 45-221(a)(4), as amended by L. 1989, ch. 154, § 1, discusses personnel files pertaining to public employees:

"(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

. . . .

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such." (Emphasis added).

As discussed in Attorney General Opinion No. 87-109, although personnel records are public records, not all public records are required to be open for public inspection. K.S.A. 1988 Supp. 45-221, as amended, permits personnel records to remain confidential. The official custodian of personnel records possesses discretionary authority to allow or prohibit public access to personnel files. "Official custodian" is defined by K.S.A. 45-217(d) as "any officer or employee of a public agency who is responsible for the maintenance of public records, regardless of whether such records are in the officer's or employee's actual personal custody or control." Both the sheriff and the board of county commissioners are officers of a public agency, the county. However, the sheriff is responsible for the maintenance of these personnel records and, thus, may be considered the official custodian of these personnel files. If the custodian of the records decides to close these files from public inspection, the issue becomes whether the board of county commissioners is entitled to examine these records in their official capacity.

K.S.A. 19-212 Sixth gives the board of county commissioners the authority to manage the business and concerns of the county "in all cases where no other provision is made by law." Kansas law vests general control over county matters in

the board of county commissioners. "The county commissioners are the general agents of the county. . . ." State v. City of Garnett, 180 Kan. 405, 407 (1956). However, authority to manage county affairs may be limited. "The means by which the county commissioners may discharge the many and varied duties imposed on them are supplied by statutes, although occasionally the courts have had to concede that there is a narrow field in which the doctrine of implied powers must be permitted to operate. . . . The only implied powers possessed by such officer or board are those which are necessary for the effective exercise and discharge of the powers and duties expressly conferred and imposed." Womer v. Aldridge, 155 Kan. 446, 449 (1942). See also Attorney General Opinion No. 62-94, Vol. III, p. 243. We are unaware of any specific statutory or case law granting authority or dictating that the board of county commissioners keep the sheriff's personnel files or be given access to these files. Thus, in order to find that such authority exists, it becomes necessary to imply such authority from the powers and duties granted to the board of county commissioners.

K.S.A. 19-4301 et seq. and 19-4403 et seq. discuss the establishment of certain county employment systems or law enforcement agencies in counties of a certain population. Although Marshall county has not adopted such systems, we are informed that this county has adopted an employee policy manual. Apparently, this manual does not specifically discuss access to the sheriff's personnel files by the board of county commissioners, nor are we convinced that the board could dictate such a policy if such authority does not otherwise exist.

County sheriffs are not hired or appointed by the board of county commissioners. "The sheriff is the state's chief executive and administrative officer in his county." State v. McCarty, 104 Kan. 301, 305 (1919). Sheriffs are selected for their offices by the voters pursuant to a general election under K.S.A. 25-101 et seq. Personnel in the office of the sheriff are selected pursuant to K.S.A. 19-805 which vests the authority to hire in the county sheriff. The sheriff, not the board of county commissioners, is empowered to hire and fire employees of the county sheriff. Sedgwick County Commissioners v. Toland, 121 Kan. 190 (1926).

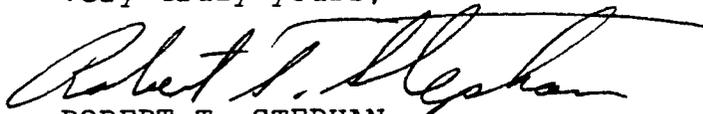
The board of county commissioners may adopt a personnel policy or agreement affecting policy and pay plans. Attorney General Opinion No. 84-30. Additionally, any payment of staff by the sheriff is subject to the budget approved by the board of county commissioners. Attorney General Opinions No. 87-14 and 87-37. Thus, the board of county commissioners possesses a

limited degree of authority regarding employees of a county sheriff. However, the authority of the board of county commissioners to establish employee policies, pay plans and budgets affecting salaries does not imply an all encompassing power over the employees of the sheriff. Under Kansas law, county sheriff's personnel are subject to the control of the county sheriff. The authority of the sheriff to appoint, hire, or fire an individual employee may not be altered by the board of county commissioners. See Attorney General Opinion No. 80-36. Thus, while the board may implement pay plans or general employee policies, the county sheriff has the final decision concerning individual employee matters.

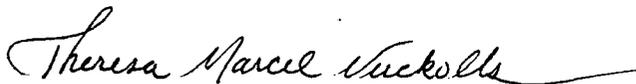
Information contained in the sheriff's personnel files generally relates to matters over which the sheriff has control. It appears that the specific personnel files do not contain information related to matters over which the board of county commissioners has authority. Thus, in making decisions within the scope of their authority, the board of county commissioners does not rely on nor require information contained in the sheriff's personnel files.

Therefore, pursuant to K.S.A. 45-221(a)(4), as amended, and subject to the exceptions contained therein, the county sheriff may discretionarily choose to decline a request by the board of county commissioners to review sheriff's personnel files. We do not find any express authority permitting the board of county commissioners to obtain and review personnel files of the county sheriff nor can such authority be implied from the powers and duties vested in the board. Absent specific facts not present in this situation, the sheriff may discretionarily deny the board of county commissioners access to sheriff's employee files.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General