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ATTORNEY GENERAL OPINION NO. 90- 101

Mark A. Burghart
General Counsel
Kansas Department of Revenue
Office of the Secretary
Docking State Office Bldg.
Topeka, Kansas 66612

Re: Monopolies and Unfair Trade -- Fair Credit
Reporting Act -- Permissible Purposes of Reports;
Legitimate Business Need

Synopsis: K.S.A. 50-703(c)(5) permits a consumer reporting agency to furnish a consumer report in circumstances involving a legitimate business need for the information in connection with a business transaction involving the consumer. A financial investigation into the assets of drug dealers by the criminal fraud unit of the division of alcoholic beverage control does not involve a consumer relationship or business transaction, and thus, K.S.A. 50-703(c)(5) does not allow a consumer reporting agency to furnish a consumer report for that purpose. Cited herein: K.S.A. 50-701; 50-703; 50-707; 15 U.S.C.S. § 1681b.

* * *

Dear Mr. Burghart:

As general counsel for the department of revenue you request our opinion on "whether K.S.A. 50-703(c)(5) authorizes the criminal fraud unit of the division of alcoholic beverage

control to obtain consumer reports, without a court order, from a consumer reporting agency for investigative purposes in regard to drug tax investigations." In addition to that information discussed at K.S.A. 50-707, you state that the purposes for requesting access to such consumer reports are as follows:

"[to] expedite the Criminal Fraud Unit's ability to identify assets before the assets are concealed or transferred. Such reports would produce leads as to bank accounts, credit cards and loans of the taxpayer. Assets of drug dealers are typically very liquid. Having access to all credit files of a drug taxpayer would positively affect both the pace and accuracy of the financial investigation. . . .

"Access to the drug taxpayer's credit history, which would uncover assets that may otherwise go unnoticed, would enable the Department to achieve a payment schedule that is fair both to the state and to the taxpayer. Information derived from a consumer credit report would insure that all of the taxpayer's assets are taken into account when structuring the payment plan Having access to the drug taxpayer's credit history would enable the Department to check the taxpayer's petition for compromise."

K.S.A. 50-701 et seq. establish the Kansas fair credit reporting act (FCRA). K.S.A. 50-703 sets forth the permissible purposes for which a consumer reporting agency may furnish a consumer report:

"A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

"(a) In response to the order of a court having jurisdiction to issue such an order;

"(b) in accordance with the written instructions of the consumer to whom it relates; and

"(c) to a person which it has reason to believe

"(1) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

"(2) intends to use the information for employment purposes; or

"(3) intends to use the information in connection with the underwriting of insurance involving the consumer; or

"(4) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

"(5) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer." (Emphasis added).

You cite K.S.A. 50-703(c)(5) as the provision you wish us to consider with regard to obtaining a consumer report from a consumer reporting agency for the purposes cited herein. Thus, we must determine whether the report will be used "in connection with a business transaction involving the consumer." 15 U.S.C.S. § 1681b(3)(e) contains language substantively identical to that set forth at K.S.A. 50-703(c)(5). The Kansas fair credit report act ". . . is modeled closely after the 1971 federal act. Therefore, case law interpreting the federal act, although not controlling, is persuasive." Peasley v. TeleCheck of Kansas, Inc., 6 Kan.App.2d 990, 994 (1981).

In Attorney General Opinion No. 88-89 we opined that K.S.A. 50-703(c)(5) did not permit the state department of social and rehabilitation services (SRS) to obtain consumer reports from consumer reporting agencies in order to collect overpaid

benefits. In our opinion collection of such overpayments did not constitute a "legitimate business need . . . in connection with a business transaction" as required by K.S.A. 50-703(c) (5).

Cases involving the business transaction purpose were discussed in Attorney General Opinion No. 88-89:

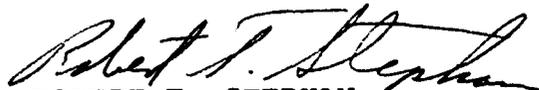
"The few courts that have dealt with this provision [of the federal act] have found that it refers only to those transactions in which there is a 'consumer relationship' between the requesting party and the subject of the report, Daniels, [v. Retail Credit Co., No. 73-CV-484 N.D.N.Y. April 16, 1976]; or in which the subject was seeking some benefit mentioned in the Act (credit, insurance, employment, licensing), Ley v. Boron Oil Co., et al., (W.D. Pa. 1976). One court has stated that the Act is intended to cover only 'commercial' transactions and no other form of 'business.' Porter v. Talbot Perkins Children's Services, 355 F.Supp. 174 (S.D.N.Y. 1973)." Henry v. Forbes, 433 F.Supp. 5, 9 (D. Minn. 1976). See also Booth v. TRW 1976. See also Booth v. TRW Credit Data, 557 F.Supp. 66, 70 (S.D.N.Y. 1982); Hansen v. Morgan, 582 F.2d 1214 (9th Cir. 1978).

"'Business transaction' has been described by at least one court as 'a purchase of goods or services.' Greenway v. Information Dynamics, Ltd., 399 F.Supp. 1092, 1095 (D. Az. 1974). We do not believe that overpayment of benefits by a government agency creates a 'consumer relationship,' particularly since no purchase of goods or services is involved. See Porter v. Talbot Perkins Children's Services, 355 F.Supp. 174 (1973) (Adoption services held not to be commercial business transaction.)" See also 15A Am.Jur.2d Collections and Credit Agencies, §§ 32-37 (1976).

In the situation you describe, the criminal fraud unit of the division of alcoholic beverage control is not offering goods or services in a transaction involving the consumer. It is conducting a financial investigation for the purposes of imposing monetary penalties resulting from potential criminal activities. Although we appreciate the policy arguments and the desire for such information, we do not believe that discovering concealed financial resources or assets of an individual involved in a drug tax investigation can be described as a consumer relationship. Rather, the requesting party in this instance unilaterally seeks information outside of any consumer relationship.

It is therefore our opinion that K.S.A. 50-703(c)(5) does not permit a consumer reporting agency to furnish a consumer report to the criminal fraud unit of the division of alcoholic beverage control for the purpose of facilitating a financial investigation into the assets of a drug dealer. There is no consumer relationship or business transaction between the drug dealer and the fraud unit, and thus, the business transaction purpose set forth at K.S.A. 50-703(c)(5) does not permit disclosure of a consumer report by a consumer reporting agency.

Very truly yours,



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Theresa Marcel Nuckolls
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