



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

April 15, 1975

CURT T. SCHNEIDER

Attorney General

Opinion No. 75-159

Mr. James T. McDonald
Secretary of Revenue
Department of Revenue
2nd Floor
State Office Building
Topeka, Kansas 66612

ATTN: Mr. William Harris, Jr.,
General Counsel

Dear Secretary McDonald:

In response to a request from this office for disclosure of certain taxation records, your office has requested an opinion defining the circumstances under which disclosure may be authorized to the Attorney General or his authorized representative.

K.S.A. 79-3234(b) provides in pertinent part thus:

"Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the director, any deputy, agent, clerk or other officer or employee to divulge, or to make known in any way, the amount of income or any particulars set forth or disclosed in any report or return required under this act" [Emphasis supplied.]

K.S.A. 79-3234, the provision which provides for the confidentiality of tax records, implicitly recognizes the need for access to such records by the attorney general:

"(c) Nothing herein shall be construed to prohibit the inspection of returns by the attorney general or other legal representatives of the state."

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Subsection (e) authorizes the director to make available or furnish information contained in tax returns, reports, audits and investigations pertaining thereto, to the Commissioner of Internal Revenue of the United States, and to taxing officials of other states, subject to the direction that "such information shall not be used for any other purpose than that of the administration of tax laws of such state or of the United States." This restriction applies only to information furnished or otherwise made available to taxing officials of other states or of the Internal Revenue Service. It does not apply to information derived under subsection (c) from "the inspection of returns by the attorney general or other legal representatives of the state," for that subsection contains no similar restriction.

Obviously, the Attorney General or his authorized representative is authorized to inspect returns only in an official capacity, and the information so obtained may be used only in the conduct of the official business of the state. The legal responsibilities of the Attorney General extend far beyond enforcement of the taxing and revenue laws of the state. It is likely that, in the common run of instances, evidence of tax fraud or evasion will first come to the attention of your department, and that all necessary information for prosecution or civil enforcement will be furnished by your office to the appropriate prosecuting authority, including this office. In many instances of alleged violation of other laws of the state, however, to cite antitrust and consumer protection laws as but examples, evidence of possible violations will most often come to the attention of this office, or of prosecuting authorities in the various jurisdictions of the state. It is in the investigation of such matters that the inspection of returns authorized by subsection (c) is most often necessary. There is no suggestion in subsection (c) that inspections authorized thereunder must be for tax-related purposes only. Information disclosed to the taxing officials of the United States or of other states under subsection (d) may be used only for tax-related purposes. No such qualification is found in subsection (c).

Accordingly, under K.S.A. 79-3234(c), the Secretary has no authority to prohibit inspection of returns by the Attorney General or his authorized representative when acting in an official capacity and in the conduct of official business of the state. I believe that the State

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of Kansas has a very creditable record of protecting the confidentiality of the tax returns and related information of its citizens, and it is important that this record be continued. However, access to returns has in the past proven important in the investigations of a variety of offenses against the laws of the state, however, and it is important that this important resource continue without compromising the rights of privacy of our citizens.

Very truly yours,

A handwritten signature in cursive script that reads "Curt Schneider". The signature is written in dark ink and is positioned above the typed name.

CURT T. SCHNEIDER
Attorney General

CTS:MCC:gdw