

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 16, 1976

ATTORNEY GENERAL OPINION NO. 76- 254

Raymond A. Bloxsom
Police Legal Advisor
Department of Police
204 West Fifth Street
Topeka, Kansas 66603

RE: Criminal Code - Sentencing - Expungement of certain convictions.

SYNOPSIS: In any inquiry concerning the existence of records of an expunged conviction from any source other than those authorized by statute, the custodian of the record must respond that no information whatever concerning existence of any expunged record may be disclosed.

The language in Chapter 161, Section 2(d) of the 1976 Session Laws of Kansas provides an absolute defense for the custodian of records to an action brought by any individual or public agency for production of records except as provided in said section.

* * *

Dear Mr. Bloxsom:

You inquire as to the construction of Chapter 161, Section 2(d) of the 1976 Session Laws.

The pertinent section reads thus:

"Whenever the record of any conviction of an individual for the commission of a crime has been expunged under the provisions of this section, the custodian of the records

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of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records upon inquiry from any source unless such inquiry be that of the individual whose record was expunged or that of a sentencing court following the conviction of the individual, whose record was expunged, for the commission of a subsequent crime. Such custodian shall release such records to the sentencing court upon a showing of the conviction of such individual of a subsequent crime and a statement that the information is necessary in determining the sentence to be imposed for the subsequent crime. The individual whose record of conviction of a crime has been expunged shall be given access to examine the records of arrest, conviction and incarceration relating to that crime."

You first ask what response other than denial need be given any prosecuting authority which may inquire about a record which has been expunged.

The statute speaks in compelling clear terminology by stating that the custodian of the records shall not disclose the existence of such records upon any inquiry from any source unless it be 1) the individual whose conviction was annulled or 2) that of a sentencing court following the conviction of the individual whose conviction was annulled for the conviction of a subsequent crime. The statute provides only a single exception, authorizing disclosure to a sentencing court and the individual whose conviction was annulled. In accordance with well established principles of statutory construction, where a statute specifically states its exceptions, others will not be devised by inference.

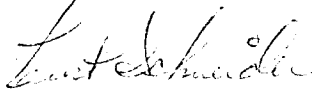
You next ask if the custodian of the records if protected from suit if the prosecuting authority persists.

The Statute again is clear as to the duties and responsibilities of the custodian. An individual is permitted to deny the existence of his prior conviction upon expungement. The custodian of the records may not betray that denial, and accordingly, upon any inquiry concerning the existence of records of an expunged conviction from any source other than the person

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whose conviction was expunged, or from a sentencing court, making such request after conviction of such individual for a subsequent offense, the custodian must respond that no information whatever concerning the existence of any expunged record may be disclosed except when received from persons authorized to make such requests.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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