



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

January 10, 1978

ATTORNEY GENERAL OPINION NO. 78- 10

Mr. Richard E. Brown  
Legislative Post Auditor  
Legislative Division of Post Audit  
Mills Building  
Topeka, Kansas 66612

Re: Governor--Records--Preservation

Synopsis: K.S.A. 75-104 requires the preservation of all documentary requests to the governor which seek his assistance in any matter because of his official position as governor of the state, and authorizes delivery of such records to the State Historical Society as the only legally permitted disposition of such records upon the expiration of the mandated three-year retention period.

\* \* \*

Dear Mr. Brown:

You request my opinion concerning what records are required to be retained by the governor under K.S.A. 75-104. That section states in pertinent part thus:

"The governor shall keep and record, in a suitable book to be provided for that purpose, a full and complete register of all applications or petitions made to him or her for the discharge of any duty imposed upon him or her, or for the exercise of any power vested in the governor by the constitution and laws of the state of Kansas." [Emphasis supplied.]

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The register required to be so kept is to be retained on file in the executive office for a period of three years, and "all of the original papers relating to such matters" shall remain on file during that period, whereupon they "may then be delivered to the state historical society by the governor."

Despite the obvious generality of the underscored language, the precise reach of the statute should be determined in accordance with the apparent legislative intent to require the preservation for historical purposes a documentary record of each governor's conduct of his or her office. The required record is to include "all applications or petitions made to him or her for the discharge of any duty imposed upon him or her, or for the exercise of any power vested in the governor by the constitution and laws of the state of Kansas." There is no suggestion in the statute that the terms "applications" or "petitions" were used in any technical legal sense to denote documents in any prescribed form. For example, there is no statutory procedure whereby gubernatorial action may be compelled or initiated in any legal sense by the filing of a petition signed by any prescribed number of electors. Likewise, nothing in the context suggests that the term "applications" is used as one of narrow and technical legal signification. Indeed, in my judgment, both terms appear to have been used in a broad and general sense, to encompass any written request to the governor seeking his or her action or intervention in some official capacity.

It may be argued that no written request to the governor is subject to this section unless it seeks performance by the governor of some express statutory duty. In my judgment, the language cannot be construed with such technicality. It refers to applications seeking action by the governor in the exercise of powers vested in that officer under either the constitution or laws of the state.

Many citizens, perhaps thousands, address themselves in writing to the governor each year, upon matters which they believe to fall within his province. Many of the problems about which citizens may contact the governor may in fact be far beyond the powers of the office to correct or to address in any fashion. Nonetheless, the governor receives numerous written requests for action, intervention or assistance in one form or another precisely because of the writers' belief that as governor, he is in a position to provide the requested action or assistance. Many write the governor not to seek the performance of some express statutory duty or obligation, but to invoke his authority as chief executive officer of the state. Article 1, § 3 of the Kansas Constitution

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that the governor "shall be responsible for the enforcement of the laws of this state." It is because of his official position as constitutional chief executive officer of the state, and not because of particular and precise statutory duties of the office, that many citizens seek to invoke his aid and assistance.

In my judgment, K.S.A. 75-104 applies to any documentary request to the governor which seeks his assistance in any matter because of his official position as governor of the state. Many citizens may misconceive their remedy, seeking action or assistance from the governor concerning some matter which he is legally or practically unable to provide. Nonetheless, such requests are addressed to him because and only because of his official position. It may be objected that thus construed, the statute requires the governor to maintain in his official legal custody for a period of three years much correspondence of little or no historical value, and much of mundane or trivial consequence. If, indeed, this is the result, it may be corrected by more specific legislation imposing less inclusive requirements. The language of the present section bespeaks a clear legislative intention to require comprehensive and nonselective retention of all documentary matter addressed to the governor seeking his action, assistance or intervention because of his official position.

Concerning the disposition of these records, this provision directs that

"all of the original papers relating to such matters shall remain on file in the executive office for a period of three years, and may then be delivered to the state historical society by the governor." [Emphasis supplied.]

The underscored language is permissive in form, suggesting that it is entirely discretionary with the governor to deliver the records to the state historical society or to make any other disposition of them which he deems appropriate. However, as a rule of statutory interpretation, the term "may," in the appropriate context, may be regarded as mandatory rather than directory. In State ex rel. Jackson v. School District No. 1, 80 Kan. 667, (1909), the court stated thus:

"Primarily and as ordinarily used in a statute the word 'may' is permissive rather than preemptory. It is sometimes regarded as synonymous

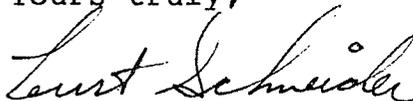
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with must, as for instance 'where public authorities are authorized to perform an act for the benefit of the public, or for an individual who has a right to its performance.' . . . It should be given its ordinary meaning, however, unless the terms and provisions of the statute compel the other view. As was said in In re McCort, Petitioner, 52 Kan. 18, 'the sense in which the word is used must always be determined from the context of the act.'" 80 Kan. at 669.

The sole disposition of the records which the legislature chose to authorize the governor to make upon the expiration of the mandated three-year retention period is to deliver them to the State Historical Society. If this authority is regarded as merely permissive, it is utterly superfluous for thereby the governor enjoys unlimited discretion to make any other disposition of the records which he chooses, including, presumptively, their destruction. In my judgment, the authorized delivery of the records to the State Historical Society is not merely permissive, but is the only legally authorized disposition of such records, a disposition for the benefit of the public, and one which the governor is not at liberty to forego at his discretion.

I understand that upon leaving office, Governor Docking delivered certain of his official papers to the State Historical Society and the bulk of them to the University of Kansas, where especial arrangements have been made for the care, cataloging and preservation of these documents for the historical record and use of students and other interested persons. I understand, further, that Governor Bennett has indicated a tentative intention to follow this example. Certainly, the installation of these official papers at the University complies with the spirit and purpose of the statute, by assuring preservation of these papers for historical purposes. Nonetheless, in my judgment, the statute directs that the governor deliver the official papers described above to the State Historical Society only, and forbids any other disposition of the documents. Disposition of future gubernatorial papers should be governed by the foregoing, and such papers should be delivered to the Society for its care.

Yours truly,



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Attorney General