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April 11, 1979

ATTORNEY GENERAL OPINION NO. 79- 49

Mr. Thomas E. Kelly
Director
Kansas Bureau of Investigation
3420 Van Buren
Topeka, Kansas 66611

Re: Criminal Procedure -- Criminal History Record
Information -- Rules and Regulations

Synopsis: The procedure prescribed by K.S.A. 1978 Supp. 22-4704 for the adoption of rules and regulations by the Director of the K.B.I. in connection with criminal history record information does not conflict with the provisions of K.S.A. 77-415 et seq., prescribing the general procedure for promulgation of administrative rules and regulations; nor does it represent a separate and exclusive procedure. Thus, rules and regulations adopted by the Director to implement K.S.A. 1978 Supp. 22-4701 et seq. must comply with the provisions of K.S.A. 1978 Supp. 22-4704 and K.S.A. 77-415 et seq.

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Dear Mr. Kelly:

K.S.A. 1978 Supp. 22-4704(a) provides that the Director of the Kansas Bureau of Investigation

"shall adopt appropriate rules and regulations for agencies in the executive branch of government and

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for criminal justice agencies other than those that are part of the judicial branch of government to implement the provisions of this act. Any rule and regulation to be adopted by the director shall first be submitted by the director to the speaker of the house of representatives and the president of the senate at the beginning of the next legislative session. Such rules and regulations shall not become effective until the same are approved by resolution of both houses."

In light of this statute, you have inquired whether the Director of the K.B.I. must follow the procedure of K.S.A. 1978 Supp. 22-4704 exclusively or whether that statute imposes requirements that are in addition to the provisions of K.S.A. 77-415 et seq.

Initially, it should be noted that K.S.A. 1978 Supp. 77-415, which is the definitions section of the general act providing for the adoption of administrative rules and regulations, provides in part:

"(4) 'Rule and regulation,' 'rule,' 'regulation' and words of like effect mean a standard, statement of policy or general order. . . of general application and having the effect of law, issued or adopted by a state agency to implement or interpret legislation Every rule and regulation adopted by a state agency to govern its enforcement or administration of legislation shall be adopted by the state agency and filed as a rule and regulation as provided in this act."

This subsection further defines these terms by listing seventeen types of "rules and regulations" which are not subject to the requirements of the succeeding sections. We do not find that any of such exceptions are applicable to the rules and regulations authorized by K.S.A. 1978 Supp. 22-4704. Thus, on its face, the general definition in K.S.A. 1978 Supp. 77-415(4) would apply to the criminal history rules and regulations, so as to make them subject to the succeeding sections of the general act concerning the promulgation of administrative rules and regulations.

Further, we do not find any other statutory provision which expressly exempts the rules and regulations authorized by K.S.A. 1978 Supp. 22-4704 from the provisions of K.S.A. 77-415 et seq., and we are not persuaded that the additional requirements imposed by the former

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statute creates a conflict with the latter statutory provision, such that the Director's rules and regulations would be exempt from such provisions. Even though K.S.A. 1978 Supp. 22-4704(a) requires that the rules and regulations "to be adopted by the director" thereunder shall first be submitted to and receive the approval of both houses of the legislature, while the general act (K.S.A. 77-426) provides for the submission of administrative rules and regulations to the legislature after adoption, it is our opinion that this disparity does not operate, by implication, to remove the rules and regulations in question from the purview of K.S.A. 77-415 et seq.

Under the general rule of statutory construction, provisions which relate to the same subject matter may be regarded as in pari materia. 73 Am.Jur.2d Statutes §189. In Kansas, the Supreme Court has stated that statutes in pari materia

"should be read together and harmonized, if possible, to the end that all may be given force and effect."
City of Overland Park v. Nikias, 209 Kan. 643, 646, (1972).

The object of this rule is to determine and give effect to the legislative intent. 73 Am.Jur.2d Statutes §187. Legislative intent is a primary tool of statutory construction of which the Kansas Supreme Court has stated:

"[T]he fundamental rule, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute even though words, phrases or clauses at some place in the statute might be omitted or inserted."
Eason v. Farmers Insurance Co., 221 Kan. 415, 421, 422 (1977).

In this regard, it should be noted that K.S.A. 1978 Supp. 77-415 was amended by the legislature during the same legislative session K.S.A. 1978 Supp. 22-4701 et seq. were enacted. If the legislature had intended to exempt the rules and regulations authorized by K.S.A. 1978 Supp. 22-4701 et seq. from the general procedure of K.S.A. 77-415 et seq., ample opportunity existed at that time.

As we interpret the two enactments, the Director potentially could encounter a lengthy delay in adopting permanent rules and regulations pursuant to both acts. As a means of mitigating this delay, to some extent, we believe the Director may seek authorization, as provided in K.S.A. 77-422, to adopt such regulations initially on a temporary basis. Prior to their temporary adoption, however, K.S.A. 1978 Supp.

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22-4704(a) requires approval of the rules and regulations "by resolution of both houses."

In summary, we believe the provisions of K.S.A. 1978 Supp. 22-4704 and K.S.A. 77-415 et seq. are in harmony with each other, and that the Director must comply with each to adopt permanent rules and regulations. However, once the legislature has given initial approval of the proposed rules, as provided in K.S.A. 1978 Supp. 22-4704(a), the Director may seek temporary adoption thereof pursuant to K.S.A. 77-422.

Very truly yours,



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RTS:TDH:KJS:may