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May 1, 1979

ATTORNEY GENERAL OPINION NO. 79- 71

Mr. Thomas J. Kennedy
Director
Alcoholic Beverage Control
State Office Building
Topeka, Kansas 66612

Re: Intoxicating Liquors and Beverages -- A.B.C. Director
and Board of Review -- Powers of Director

Synopsis: The director, agents and designated employees of the Alcoholic Beverage Control Division of the Department of Revenue are "law enforcement officers" within the meaning of K.S.A. 1978 Supp. 38-805c; therefore, such personnel are entitled to juvenile arrest/apprehension reports regarding illegal alcoholic beverage transactions which are in the possession of law enforcement agencies.

* * *

Dear Mr. Kennedy:

You inquire whether it is lawful for a law enforcement agency to withhold arrest or apprehension records of juveniles pertaining to illegal alcoholic beverage transactions, when such reports have been requested by authorized personnel of the Alcoholic Beverage Control Division of the Department of Revenue in order to discharge their official duties.

The statutory provision which authorizes the director, and by implication designated employees, to demand pertinent record information is K.S.A. 1978 Supp. 41-209, which provides in part:

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"The director shall have the following powers, functions and duties: . . .

"(3) To call upon other administrative departments of the state, county and city governments, sheriffs, city police departments, city marshalls, peace officers and upon prosecuting officers for such information and assistance as he or she may deem necessary in the performance of the duties imposed upon the director by this act. . . ."

From the foregoing statute it is clear that the legislature has vested power in the director to obtain records from virtually any governmental entity which may be necessary in carrying out the alcoholic beverage laws contained in Chapter 41 of Kansas Statutes Annotated.

Having considered this general power of inquiry, we must turn to your specific request, i.e., records of juvenile arrests or apprehensions involving illegal alcoholic beverage transactions. Disclosure of records held by law enforcement agencies regarding public offenses committed or alleged to have been committed by juveniles is controlled by K.S.A. 1978 Supp. 38-805c, subsection (b) of which provides:

"(b) Except as provided in subsection (c), all records of law enforcement officers or agencies, municipal courts and other governmental entities in this state concerning a public offense committed or alleged to have been committed by a child less than eighteen (18) years of age, shall be kept separate from criminal or other records, and shall not be disclosed to anyone, except:

(1) The judge, and members of the court staff designated by the judge, of a district court having the child before it in any proceeding;

(2) The parties to the proceeding and their counsel;

(3) The officers of public institutions or agencies to whom the child is committed;

(4) Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;
or

(5) To any other person, when ordered by a judge of a district court in this state, under such conditions as the judge may prescribe." (Emphasis supplied.)

Although disclosure of juvenile arrest or apprehension records is more restricted than adult records, the preceding statute expressly permits dissemination of such information to law enforcement officers when

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necessary for the discharge of their official duties. For that reason it is necessary to inquire whether designated employees and agents of the Alcoholic Beverage Control Division of the Department of Revenue are law enforcement officers within the meaning of K.S.A. 1978 Supp. 33-805c(b) (4).

The term "law enforcement officer" is defined by K.S.A. 1978 Supp. 38-802(i) as follows:

" 'Law enforcement officer' means any person who by virtue of his or her office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes."

The foregoing language clearly indicates that the term as used in the act embraces a wider range of persons than those vested with general police powers. The police powers of the director, agents and employees of the Alcoholic Beverage Control Division are set out in K.S.A. 41-201 as follows:

"The director of alcoholic beverage control and such agents and employees of the director as shall be designated by the director, with the approval of the secretary of revenue, are hereby vested with the power and authority of peace and police officers, in the execution of the duties imposed upon the director of alcoholic beverage control by this act and in enforcing the provisions of this act." (Emphasis supplied.)

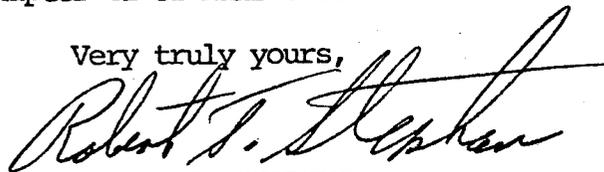
In light of the foregoing statutory provisions, it is our opinion that the director and agents and employees designated by the director are "law enforcement officers" within the meaning of K.S.A. 1978 Supp. 38-802(i) and subsection (b) (4) of K.S.A. 1978 Supp. 38-805c. For this reason, we must conclude that such personnel are entitled to receive from law enforcement agencies juvenile arrest/apprehension reports which pertain to illegal alcoholic beverage transactions. We need not elaborate that such reports are fundamental to enforcement of the act, especially with regard to K.S.A. 41-715, 41-2615, 41-2704 and 41-2711.

Your final inquiry is whether the Alcoholic Beverage Control Division may require a law enforcement agency to provide the reports heretofore considered. We can only speculate on this question of policy. We would reiterate, however, that the powers and duties we have referred

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to throughout this opinion are granted by the Kansas legislature, and as such, they express the clear intent of the legislature to provide for enforcement of the laws of the State of Kansas. In that respect, the State has a clear and compelling interest in fully exercising the powers and duties set out in Chapter 41 of Kansas Statutes Annotated.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



James E. Flory
Assistant Attorney General

RTS:TDH:JEF:may