



STATE OF KANSAS

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May 1, 1979

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ATTORNEY GENERAL OPINION NO. 79- 73

The Honorable Willard Thompson
State Representative, Eighty-Fifth District
8302 East Gilbert
Wichita, Kansas 67207

Re: Laws, Journals, and Public Information--Records
Open to Public--Inspection of Official Public
Records

Synopsis: The application for a cigarette vending machine operator's master license is not an "official public record" within the meaning of K.S.A. 1978 Supp. 45-201, which governs disclosure of public records. Thus, the director of taxation need not make said application available for public inspection.

* * *

Dear Representative Thompson:

You request the opinion of this office as to whether the Director of Taxation may properly refuse to allow inspection of the application for a vending machine operator's master license.

Your inquiry involves consideration of the requirements for disclosure of public records, which are statutorily prescribed by K.S.A. 1978 Supp. 45-201. This statute provides in pertinent part as follows:

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"All official public records of the state, counties, municipalities, townships, school districts, commissions, agencies and legislative bodies, which records by law are required to be kept and maintained, except those of the district court concerning proceedings pursuant to the juvenile code which shall be open unless specifically closed by the judge or by law, adoption records, records of the birth of illegitimate children, and records specifically closed by law or by directive authorized by law, shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen." (Emphasis added.)

In accordance with the underscored language of the foregoing statutory provisions, a record does not become an "official public record" unless there is a law requiring that it be "kept and maintained." This interpretation was adopted by the Kansas Supreme Court in Atchison, T. & S.F. Rly. Co. v. Commission on Civil Rights, 215 Kan. 911, 919 (1974): "45-201 applies only to public records which are required by law to be kept and maintained." (Emphasis added.)

A review of the statutory provisions relating to the Cigarette Tax, K.S.A. 79-3301, et seq., reveals that there is no statute which requires that the application for a vending machine operator's master license be "kept and maintained" by the Director of Taxation. K.S.A. 79-3303 relates to the application for such license and provides, in part, as follows:

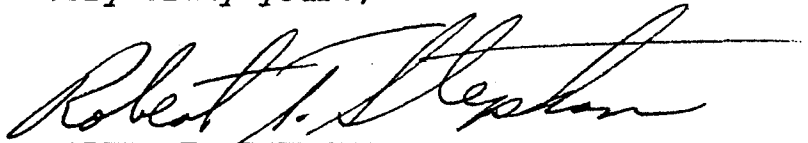
"Each person engaged in the business of selling cigarettes in the state of Kansas shall secure a license as hereinafter set out. A separate application, license, and fee is required for each dealer establishment owned or operated by said dealer: Provided, That a vending machine operator may submit one application for a vending machine operator's master license and for permits for all vending machines operated by him or her The application for a vending machine operator's master license and vending machine permits shall list the brand name and serial number of each machine, and such other information as required by the director."

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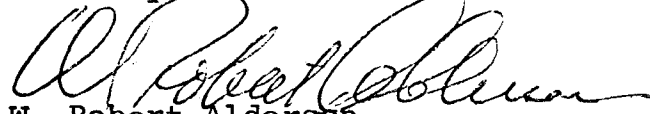
Clearly, said statute cannot be construed as requiring the Director of Taxation to "keep and maintain" applications for vending machine operator's master licenses. Further, we have found no other law which requires the keeping or maintaining of such documents, although preserving them may be an otherwise prudent means of administering the cigarette tax laws.

We must conclude, therefore, that the application for a vending machine operator's master license is not an "official public record," within the meaning of K.S.A. 1978 Supp. 45-201, and that the Director of Taxation is not legally required to make said application available for public inspection, although we are aware of no legal impediment to the Director's public disclosure of such document, if he so chooses.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk