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May 30, 1979

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ATTORNEY GENERAL OPINION NO. 79-98

Mr. John Dekker
Wichita City Attorney
City Hall - Thirteenth Floor
455 North Main Street
Wichita, Kansas 67202

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

Synopsis: Dissemination of data pertaining to violations of
traffic laws and ordinances is not prohibited by the
Kansas Criminal History Record Information Act
(K.S.A. 1978 Supp. 22-4701 et seq.).

The "Narrative" section of the Kansas motor vehicle
accident report form is not exempt from public
inspection, but rather is open for public inspection
in accordance with K.S.A. 8-1611(b).

The Legislature's passage of 1979 House Bill No. 2034
limits the dissemination of arrest-citation data contained
in motor vehicle accident reports and necessitates
modification of public inspection procedures described
in Attorney General Opinion No. 79-17.

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Dear Mr. Dekker:

You have requested a clarification and reconsideration of Attorney
General Opinion No. 79-17 as it pertains to motor vehicle accident
reports, in light of both state and federal laws and regulations

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concerning criminal history record information and in light of the Legislature's passage of 1979 House Bill No. 2034. In addressing your inquiries, we will first consider the effect of the laws and regulations governing criminal history record information and then turn to the potential impact which the enactment of House Bill No. 2034 will have.

The State of Kansas' Criminal History Record Information Plan was approved by the United States Department of Justice, Law Enforcement Assistance Administration, in a letter dated August 26, 1976 from Paul K. Wormeli, Deputy Administrator for Administration. In the approval letter Mr. Wormeli states:

"Pursuant to the Department of Justice' Criminal Justice Information Systems Regulations, (28 C.F.R. Part 20), LEAA has reviewed the above noted plan. On the basis of this review it is concluded that the plan adequately addresses all requirements of the Regulations and is approved as submitted." [Emphasis supplied.]

The approved plan is codified in K.S.A. 1978 Supp. 22-4701 et seq., and it is our opinion that this statutory scheme is the controlling law regarding dissemination of criminal history record information by Kansas criminal justice agencies. In this regard, we turn to your concern that dissemination of data contained in the "Arrest-Citation" section of the Kansas motor vehicle accident report form may run afoul of the applicable laws relating to dissemination of criminal history record information. K.S.A. 1978 Supp. 22-4701(b) (4) provides:

"'Criminal history record information' means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event. The term does not include:

. . . .

"(4) data pertaining to violations of the traffic laws of the state or any other traffic law or ordinance, other than vehicular homicide;" [Emphasis supplied.]

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It is our opinion that the foregoing statutory definition clearly exempts data pertaining to traffic violations from the category of criminal history record information; therefore, the dissemination guidelines for criminal history record information do not apply to dissemination of data regarding traffic violations. It should be noted that information pertaining to commission of the crime of vehicular homicide, as described in the Kansas Criminal Code, constitutes criminal history record information, and dissemination of that information in connection with a motor vehicle accident would be governed by K.S.A. 1978 Supp. 22-4701 et seq. It is our opinion that K.S.A. 1978 Supp. 22-4701(b)(4) exempts all traffic violations contained in Chapter 8 of the Kansas Statutes Annotated (or their local counterparts), and that only when offenses set out in the Kansas Criminal Code or Kansas Liquor Control Act are cited does the Kansas Criminal History Record Information Act limit public inspection of motor vehicle accident reports. We do not find this determination to be in conflict with K.S.A. 1978 Supp. 45-201, in that this statute provides an exception to public inspection for "records specifically closed by law or by directive authorized by law."

In conclusion, the Kansas laws regarding the dissemination of criminal history record information do not prohibit public inspection of motor vehicle accident reports, unless a criminal offense other than a traffic offense is noted in the "Arrest-Citation" section of the report. In the latter situation, only the "Arrest-Citation" section of the report is exempt from public inspection as a portion of the record which is specifically closed by law. In this regard, Attorney General Opinion No. 79-17 is modified to exempt public inspection of the "Arrest-Citation" portion of the motor vehicle accident report when such a criminal offense is cited and the request for inspection is not contemporaneous with the event pursuant to K.S.A. 1978 Supp. 22-4708. It should be noted that neither the requirements of K.S.A. 1978 Supp. 45-201 nor the context of this opinion alters the specific provisions of K.S.A. 1978 Supp. 38-805c which govern the dissemination of data pertaining to violations of selected traffic laws by juvenile offenders.

Although it is our opinion that reports, memoranda and documents pertaining to the investigation and prosecution of a criminal case are not open to public inspection (see Attorney General Opinion No. 79-17), we believe that K.S.A. 8-1611(b) requires a contrary conclusion regarding the motor vehicle accident report narrative.

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While it is true that this section may contain an officer's opinion of what occurred and various investigative information, the Legislature has provided that such information is not privileged or confidential. Therein lies the distinction between the investigative reports of criminal offenses and the investigative reports of motor vehicle accidents. While the Legislature is silent on the former, it has affirmatively addressed the latter and mandated public inspection.

Your final inquiry concerns the impact of House Bill No. 2034 which was enacted by the 1979 Session of the Kansas Legislature regarding the dissemination of arrest data once the charges have been dismissed, the accused has been released pursuant to K.S.A. 22-2406, or the accused has been acquitted by a court of law. It is our opinion that the enactment of this bill clearly affects the disclosure of information contained in the "Arrest-Citation" section of motor vehicle accident reports and requires a modification of existing procedures. Section 1 of House Bill No. 2034 provides:

"Section 1. (1) Whenever any person has been arrested for the violation of any ordinance of any city, the resolution of any county in this state or any law of this state and the charges have been dismissed or the person has been found not guilty by a court or jury or where the person arrested has been released pursuant to K.S.A. 22-2406, all records of such arrest, including fingerprints and photographs of the person shall be confidential information. Such information shall not be disclosed by any officer or employee of a criminal justice agency, as defined in K.S.A. 1978 Supp. 22-4701, to anyone other than another officer or employee of such a criminal justice agency, a prosecuting attorney or to the person arrested or his or her attorney. Such disclosure shall only be made on written request.

"(2) Any person so arrested may state in any application for employment, license or other civil right or privilege, or any appearance as a witness, that he or she has never been arrested for such violation." [Emphasis supplied.]

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Although it is arguable that the foregoing legislation pertains only to custodial arrests and not to the issuance of citations or notices to appear, we believe that such a conclusion would require a rather irrational distinction in light of the statutory scheme which allows utilization of either procedure regardless of the particular violation involved. (K.S.A. 1978 Supp. 8-2104, 8-2105, 8-2106.) For this reason, it is our opinion that House Bill No. 2034 applies to circumstances where a citation/notice to appear is issued as well as when a custodial arrest is effected.

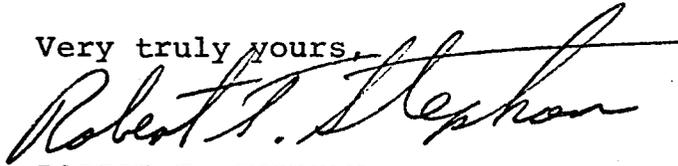
Although we have indicated in the previous discussion that traffic violation data contained in motor vehicle accident reports is not generally subject to the laws regulating the dissemination of criminal history record information, it is clear the House Bill No. 2034 does not similarly exempt such information, but rather, places the burden on the individual criminal justice agency to refrain from disclosing arrest-citation information under the circumstances described. As a practical matter, it would appear to be an insurmountable task for any such agency to continually monitor court dispositions of all offenses and, subsequently, modify the motor vehicle accident reports so as to conform with the dictates of House Bill No. 2034. For this reason, it is our opinion that a law enforcement agency may legally deny public inspection of the "Arrest-Citation" section of the motor vehicle accident report once a "reasonably contemporaneous" time period has passed. Although the term "reasonably contemporaneous" is subject to interpretation, it is our opinion that a time period of forty-eight (48) hours following the motor vehicle accident is reasonably contemporaneous and may be used as a guideline by local agencies. Such a procedure would provide compliance with K.S.A. 1978 Supp. 22-4701 et seq., in the event criminal history record information is included, since contemporaneous dissemination is authorized in K.S.A. 1978 Supp. 22-4708. Additionally, the procedure would meet the requirements of House Bill No. 2034, in that the occurrence of any of the enumerated situations which restrict dissemination would be highly unlikely within such a limited time period.

Another possible alternative, and one currently being considered by the Division of Vehicles, is to discontinue use of the

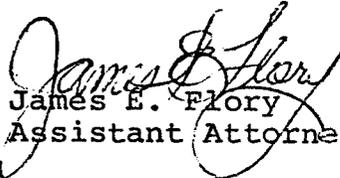
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"Arrest-Citation" section of the accident report entirely. Since only conviction data is presently considered by the Division of Vehicles, the utility of the "Arrest-Citation" section, especially in light of the new legislation, is clearly questionable.

Very truly yours,



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Attorney General of Kansas



JAMES E. FLORY
Assistant Attorney General

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