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September 14, 1979

ATTORNEY GENERAL OPINION NO. 79- 204

Mr. Joseph Snell
Executive Director
Kansas State Historical Society
120 West 10th St.
Topeka, Kansas 66612

Re: Criminal Procedure -- Criminal History Record Information --
Dissemination of Reportable Events by Noncriminal Justice
Agencies

Synopsis: Kansas Prison Inmate records transferred to the Kansas State
Historical Society prior to enactment of the Criminal History
Record Information Act for historical purposes are open to
public inspection.

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Dear Mr. Snell:

You request our opinion whether files in the possession of the Kansas State Historical Society relating to past prisoners of the Kansas State Prison are open to public inspection. In the past, you inform us the Society has made the files available for public use, however, with the increase of legislation concerning individual privacy and security, you have requested our opinion whether the inmate files are open for public inspection. It is our understanding that the records in question date from 1863 and continue until World War I, and contain personal information that would not otherwise be available from district court records. Further, it is our understanding that the files were turned over to the Historical Society by the Department of Corrections in reliance upon K.S.A. 75-2706 and 75-2707.

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The Criminal History Record Information Act, K.S.A. 1978 Supp. 22-4701 et seq., contains certain prohibitions against disseminating criminal history record information which is defined as "data initiated or collected by a criminal justice agency on a person pertaining to a reportable event." K.S.A. 1978 Supp. 22-4701(b). K.S.A. 1978 Supp. 22-4705(a) provides the following definition of reportable events:

- "(1) issuance of an arrest warrant;
- "(2) an arrest;
- "(3) release of a person after arrest without the filing of a charge;
- "(4) dismissal or quashing of an indictment or criminal information;
- "(5) an acquittal, conviction, or other disposition at or following trial, including a finding of probation before judgment;
- "(6) imposition of a sentence;
- "(7) commitment to a correctional facility, whether state or locally operated;
- "(8) release from detention or confinement;
- "(9) an escape from confinement;
- "(10) a pardon, reprieve, commutation of sentence, or other change in a sentence, including a change ordered by a court;
- "(11) judgment of an appellate court that modifies or reverses the lower court decision;
- "(12) order of a court in a collateral proceeding that affects a person's conviction, sentence, or confinement, including any expungement or annulment of arrests or convictions pursuant to state statute; and
- "(13) any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the director."
(Emphasis supplied.)

K.S.A. 1978 Supp. 22-4707, which restricts dissemination of criminal history record information, provides:

- "(a) A criminal justice agency and the central repository may not disseminate criminal history record information except in strict accordance with laws including applicable rules and regulations adopted pursuant to this act. A criminal justice agency may not request such information from the central repository or another criminal justice agency unless it has a legitimate need for the information.

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"(b) Noncriminal justice persons and agencies may receive criminal history record information for such purposes and under such conditions as may be authorized by law, including rules and regulations adopted pursuant to this act.

"(c) The central repository or a criminal justice agency may not subvert the requirements of this section by merely confirming or denying the existence or nonexistence of criminal history record information relating to a person.

"(d) In addition to any other remedy or penalty authorized by law, any individual violating or causing a violation of the provisions of this section shall be deemed guilty of a class A misdemeanor. If the person is employed or licensed by a state or local government agency, a conviction shall constitute good cause to terminate employment or to revoke or suspend a license."

Initially, it is our understanding that the inmate records contain personal information such as inmate "sick call" records. These portions of the file are not criminal history record information pursuant to K.S.A. 1978 Supp. 22-4701(b) and 22-4705(a). Thus, the restrictions of K.S.A. 1978 Supp. 22-4707 would have no applicability to this specific information.

Secondly, the inmate files were delivered to the Historical Society during the mid-1960's, prior to the adoption of the Criminal History Record Information Act, effective March 1, 1978. At the time these records were transferred to the Society, our research indicates there were no prohibitions restricting transfer of "criminal history information" by "criminal justice agencies" to noncriminal justice agencies as now prohibited by K.S.A. 1978 Supp. 22-4707. Thus, the transfer of files was not in violation of then existing statutory provisions.

Thirdly, the restrictions on dissemination contained in the Criminal History Record Information Act are directed to criminal justice agencies. K.S.A. 1978 Supp. 22-4701(c) defines criminal justice agency and states in part:

"(c) 'Criminal justice agency' means any government agency or subdivision of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation, or release of persons suspected, charged or convicted of a crime and which allocates a substantial portion of its annual budget to any of those functions."

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Given the definition of criminal justice agency, it is apparent that the Kansas Historical Society is not such an agency and, as such, is not subject to the restrictions of K.S.A. 1978 Supp. 22-4707.

Regarding official materials turned over to the Kansas Historical Society, K.S.A. 75-2707 provides:

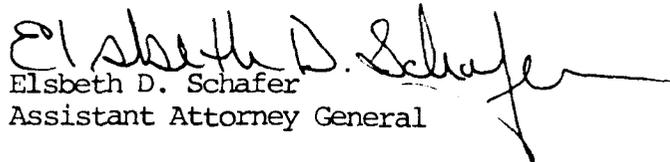
"The state historical society is hereby required to make readily available for public use the manuscript, books and papers so surrendered."

Thus, it is our opinion that the specific records now in the possession of the Society and mentioned above are open for public inspection.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Elsbeth D. Schafer
Assistant Attorney General

RTS:TDH:EDS:may