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October 3, 1979

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ATTORNEY GENERAL OPINION NO. 79- 217

Richard L. Schodorf
Assistant District Attorney
Sedgwick County Courthouse - Annex
535 North Main Street
Wichita, Kansas 67203

Re: Procedure, Civil -- Liens for Labor and Materials
-- Disclosures by Subcontractors

Synopsis: The Federal Privacy Act of 1974 (5 U.S.C.A. §552a) does not preclude a subcontractor of a general contractor for the improvement of residential property from disclosing to the owner of such property information regarding the general contractor's payments to the subcontractor.

* * *

Dear Mr. Schodorf:

You have requested our opinion regarding certain aspects of K.S.A. 1978 Supp. 60-1101 et seq. These statutes grant a lien on residential property to contractors, subcontractors and others in connection with the improvement of such property. These statutes were amended in 1978 (L. 1978, ch. 230), and without unduly burdening this opinion with a detailed explanation of such amendments, suffice it to state that the apparent legislative intent underlying these changes is to provide an owner of such property with the ability to obtain sufficient information that will prevent the owner from paying twice for the same work or materials.

As a result of these recent amendments, a general contractor must furnish a list of his or her subcontractors to the owner of residential property being improved by such contractor. The acquisition of such list enables the owner to make inquiry of each such subcontractor, prior to making final

payment to the general contractor, as to whether such subcontractor has been paid by the general contractor. It is this situation that has prompted you to inquire whether the disclosure of such information by a subcontractor is precluded by the Federal Privacy Act of 1974, 5 U.S.C.A. §552a.

The Privacy Act is directed primarily to agencies of the United States government which have gathered information concerning arrests, criminal charges, convictions, etc., on persons and businesses, and is intended to prohibit the wholesale dissemination of that information without the specific consent of the individual concerned. Subsection (b) of 5 U.S.C.A. §552a provides that "agencies" shall not disclose any records except under certain specified circumstances. Pursuant to subsection (a)(1) of §552a, "the term 'agency' means agency as defined in section 552(e) of this title," which reads as follows:

"For the purposes of this section, the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency."

5 U.S.C.A. §551(1) states that "'agency' means each authority of the Government of the United States."

While certain state and local agencies may come under the purview of the Privacy Act under specified circumstances concerning criminal history records, these exceptions are not germane to the present issue. Therefore, it is our opinion that the Privacy Act does not preclude a subcontractor of a general contractor for the improvement of residential property from disclosing to the owner of such property information regarding the general contractor's payments to the subcontractor.

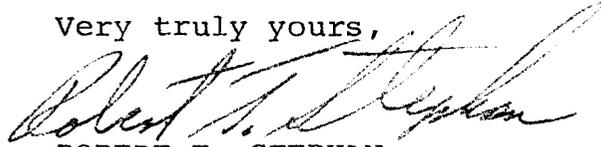
While the foregoing provides an answer to your specific inquiry, it appears to be a possibility that some subcontractors and suppliers may have confused the Privacy Act with the Fair Credit Reporting Act (15 U.S.C.A. §1681 et seq.); and even though you did not mention it in your inquiry, we believe the latter Act worthy of comment in this opinion.

The purpose of the Fair Credit Reporting Act is to protect consumers by affording them fair treatment by consumer reporting

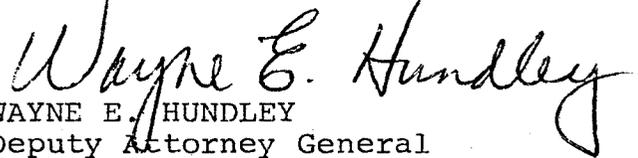
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agencies. The Act defines a consumer reporting agency as a person or business or cooperative effort that regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information, or other information on consumers, for the purpose of furnishing consumer reports to third parties. It is readily apparent that a subcontractor's disclosure of information to a property owner does not come within the scope of this definition. Therefore, we are of the opinion that these sections of federal law likewise are not applicable to the situation considered herein.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



WAYNE E. HUNDLEY
Deputy Attorney General

RTS:WEH:vls