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January 14, 1980

ATTORNEY GENERAL OPINION NO. 80-11

Alan F. Alderson
General Counsel
Department of Revenue
State Office Building
Topeka, Kansas 66625

Re: Criminal Procedure -- Criminal History Record Information --
Disclosure of Arrests Not Resulting In Conviction -- Motor
Vehicle Accident Reports

Synopsis: Information contained in Item numbers 116 through 125 of
the Kansas Department of Revenue Motor Vehicle Accident
Report form which relates to alcohol intake and chemical
test results does not constitute a record of arrest, and
disclosure of such information is not subject to the
provisions of K.S.A. 1979 Supp. 22-4712 which prohibit
disclosure of arrests not resulting in conviction.

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Dear Mr. Alderson:

As general counsel for the Kansas Department of Revenue you request
our opinion as to whether disclosure of selected items of information
recorded on the Kansas Department of Revenue Motor Vehicle Accident
Report form would constitute a violation of K.S.A. 1979 Supp. 22-4712.
It is our understanding that your concern relates to item numbers
116, 117, 118, 119, 120, 123, 124 and 125 on the accident report form.

The fundamental question you present is whether the enumerated items
constitute records of an arrest within the meaning of K.S.A. 1979 Supp.

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22-4712. We believe they do not. Subsection (1) of K.S.A. 1979 Supp. 22-4712 provides:

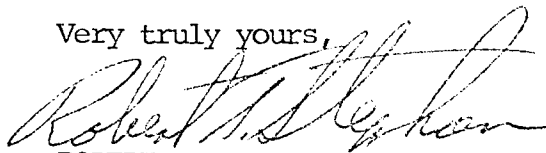
"Whenever any person has been arrested for the violation of any ordinance of any city, the resolution of any county in this state or any law of this state and the charges have been dismissed or the person has been found not guilty by a court or jury or where the person arrested has been released pursuant 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. 1979 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."

While it is true that the information contained in items 116 through 125 of the accident report form relates to the alcohol intake and chemical test results of drivers and pedestrians, it is our opinion that such information does not constitute a record of arrest. In this respect the enumerated items are not unlike other items of the accident report form which involve investigation as to the possible cause of the accident (e.g., 110, 112, 113, 115). As indicated in Attorney General Opinion Nos. 79-17 and 79-98 we believe that such items of information are open for public inspection.

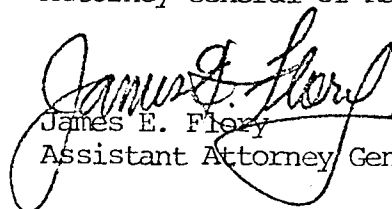
It is our opinion that K.S.A. 1979 Supp. 22-4712 prohibits disclosure of only those records which arguably reflect the incidence of an arrest, and that the information contained in the item numbers you cite are at most collateral indicators of arrest potential.

In closing we would reaffirm our position that under the selected circumstances of K.S.A. 1979 Supp. 22-4712, disclosure of item number 181 of the accident report form which reflects arrests made or citations issued in connection with the accident would be prohibited. A detailed discussion of this topic is contained in Attorney General Opinion No. 79-98, which we include for your information.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



James E. Flory
Assistant Attorney General