



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN
ATTORNEY GENERAL

March 12, 1980

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ATTORNEY GENERAL OPINION NO. 80-70

William D. Malcolm
Clay County Attorney
705 Fifth Street
Clay Center, Kansas 67432

Re: Counties and County Officers--County
Records--Destruction of Records or
Documents Over 20 Years Old

Synopsis: Files compiled by and contained in a
county attorney's office are records
subject to the provisions of K.S.A.
19-254 et seq., and if over 20 years
old may be destroyed pursuant to the
requirements contained in that act.

* * *

Dear Mr. Malcolm:

As County Attorney for Clay County, you have requested the opinion of this office as to your authority to destroy old files assembled by your office in past years. You inform us that for the most part the files contain material on old criminal cases, and date back to 1935 and beyond. A shortage of file space prompts your query.

Your situation would appear to be governed by the provisions of K.S.A. 1979 Supp. 19-254 et seq., dealing with the destruction of certain county records and documents over 20 years old. The statutes, which apply to any county records except those dealing with election matters or maintained by the district court (K.S.A. 1979 Supp. 19-256), provide that a three-step procedure before actual destruction can occur. Briefly, the steps are as follows:

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(1) The records must be offered to the state historical society for its possession and use. K.S.A. 1979 Supp. 19-254.

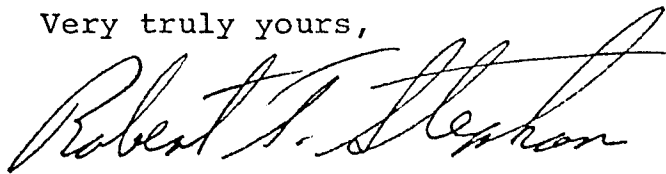
(2) Following written notice from the society that it has no interest in the records, the board of county commissioners and any elected county official (in this case, yourself) may jointly petition the district court for permission to destroy the records. K.S.A. 1979 Supp. 19-254. The petition is to be drawn by your office, and must allege that in petitioner's opinion the records described therein are worthless or of negligible value. K.S.A. 19-255, 19-257.

(3) The district court must then find that the documents are in fact of no substantial value and that the provisions of the act have been followed. K.S.A. 19-257.

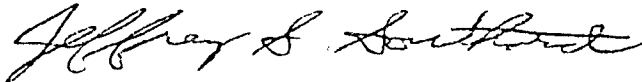
Only if the above steps are taken can the records in your control be disposed of, as there appears to be no other statutes which authorize any special treatment for county attorney files.

In conclusion, files compiled by and contained in a county attorney's office are records subject to the provisions of K.S.A. 19-254 et seq., and if over 20 years old may be destroyed pursuant to the requirements contained in that act.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk