



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

February 12, 1982

ATTORNEY GENERAL OPINION NO. 82- 36

Joseph W. Snell
Executive Director
Kansas State Historical Society
120 West Tenth
Topeka, KS 66612

Re: Law Journals and Public Information --
Public Records Preservation -- Disposal
of Government Records

Criminal Procedure -- Criminal History
Record Information -- Restriction on
Dissemination

Synopsis: Noncurrent investigative and criminal history records maintained by a state criminal justice agency may be transferred to the state archives, and must be so transferred if directed to do so by the state records board. Any state or local criminal justice agency may transfer such records accepted by the state archivist.

A state criminal justice agency must receive the approval of the state records board or meet the board's retention and disposition schedule prior to destroying any records. A county criminal justice agency before destroying records must first offer their records to the state historical society and then should give full consideration to

Joseph W. Snell
Page Two
February 10, 1982

the recommendations of the state records board. City criminal justice agencies should also give full consideration to the state records board's recommendation and any provisions enacted to provide for a city historical organization prior to disposal of their records. Cited herein: K.S.A. 12-1658, 19-254, 22-4701, 22-4707, 75-2706 (now repealed), 45-405, 45-408, 45-409; K.A.R. 1981 Supp. 10-12-2.

* * *

Dear Mr. Snell:

You have requested an opinion of this office concerning records maintained by criminal justice agencies. Your first inquiry is whether a criminal justice agency may transfer to the state archives records or reports made by the agency in the course of its public duties. Your second question involves the disposal of those records by criminal justice agencies and whether prior approval must be received from the state records board or state historical society.

Initially, we believe it is necessary to define the nature of the records maintained by a criminal justice agency that are in issue. In the course of the public duties performed by a criminal justice agency, we believe there are two basic types of records: intelligence or investigative records and criminal history records. The former are not statutorily defined, but in our opinion include, for example, information obtained from the investigation of reports made of alleged violations of the law. Intelligence and investigative reports are not specifically governed by any state laws concerning transfer of the records or disposal thereof.

The latter type of record, criminal history records, are governed by K.S.A. 22-4701 et seq., the Criminal History Record Information Act, in which "criminal history record information" is defined as "data initiated or collected by a criminal justice agency on a person pertaining to a reportable event". K.S.A. 22-4701(b). Occurrences which are "reportable events" are described at K.S.A. 22-4705(a) and include the arrest of an individual and disposition of

Joseph W. Snell
Page Three
February 10, 1982

that arrest. A record of this information is traditionally kept separately from investigation reports and is commonly referred to as the "rap sheet." In addition to the rap sheet, such information as "the arrest warrant, arrest index cards of the agency involved, photographs, and fingerprint cards" are clearly records of arrest and, as such, are governed by the Act. Stephens v. Van Arsdale, 227 Kan. 676, 684 (1980). With the foregoing classification of records in mind, we turn to your initial question: May a criminal justice agency transfer records to the State archives? Pursuant to Chapter 331 of the 1981 Kansas Session Laws, effective July 1, 1981, the legislature repealed K.S.A. 75-2706 and enacted new provisions governing records, the state records board and the state historical society. K.S.A. 45-405(b) of the Government Records Preservation Act, as the law is titled, provides, in pertinent part, as follows:

"Any state or local agency may transfer to the state archives any noncurrent government records accepted by the state archivist and all state agencies shall transfer to the state archives any non-current government records when directed to do so by the state records board."

We have little difficulty in finding that noncurrent intelligence and investigative files may be transferred to the state archives. Further, those records must be transferred if the state records board directs a state agency to do so. We find no legal basis for concluding that such records are entitled to be treated differently than any other state or local agency records. Further, we believe that noncurrent Criminal History Records may also be transferred to the state archives. As a general rule, criminal history record information may not be disseminated except to another criminal justice agency. (K.A.R. 1981 Supp. 10-12-2). However, K.S.A. 22-4707(b) provides that, "[n]on-criminal 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." In our opinion, that statute would authorize the state archivist to receive criminal history record information, once the state records board directs the state agency to transfer the noncurrent records pursuant to the provisions of K.S.A. 45-405(b) quoted above, and by those same provisions, a local criminal justice agency may also transfer noncurrent criminal history record information to the state archivist.

Your second inquiry is whether a criminal justice agency may dispose of records made by that agency in the course of its

Joseph W. Snell
Page Four
February 10, 1982

public duties, absent prior approval of the state records board and the state historical society. K.S.A. 45-408(a) of the Government Records Preservation Act provides that each agency of state government shall

"[o]btain authority from the state records board before disposing of any government record, unless the disposition is authorized by statute or in the retention and disposition schedules, or unless the record is being deposited in the state archives; obtain authority from the board before disposing of any government record prior to termination of the minimum retention period listed in the retention and disposition schedules."

Therefore, absent authorization by statute or in the retention and disposition schedules for disposal of records, a state agency must have approval of the state records board to dispose of a record. Pursuant to the new act, local agencies, such as cities and counties, are not required to obtain the authority of the state records board prior to disposal, but are directed to "give careful consideration to the recommended retention and disposition schedule prepared by the state archivist when considering the disposition of government records." K.S.A. 45-409(a). However, K.S.A. 19-254 also provides for the disposal of county records, requiring that the records proposed to be destroyed must have been offered to the state historical society prior to petitioning the district court for destruction of the records. Statutes in pari materia should be read together so that all may be given force and effect. City of Overland Park v. Nikias, 209 Kan. 643, 646, (1972). Thus, it is our opinion that county criminal justice agencies may not dispose of their records without first offering them to the state historical society, as prescribed by K.S.A. 19-254, and such agencies should give consideration to the recommendation of the state records board for destruction of records.

Criminal justice records maintained by a city agency are subject to the recommendation of the state records board before destruction. K.S.A. 45-409(a). Such local agencies may also be subject to K.S.A. 12-1658 concerning historical collection by cities. Those agencies should confer with their governing body as to the extent of any provisions covering the destruction of records.

Concerning the destruction of records held by a criminal justice agency, our opinion may be summarized as follows. A state criminal justice agency must receive the approval of the state

Joseph W. Snell
Page Five
February 10, 1982

records board or meet the board's retention and disposition schedule prior to destroying any records. A county criminal justice agency must first offer their records to the state historical society and then should give full consideration to the recommendations of the state records board. City criminal justice agencies should also give full consideration to the state records board recommendation and any provisions enacted to provide for a city historical organization.

Very Truly Yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Kurt J. Shernuk
Assistant Attorney General

RTS:JEF:KJS:bls