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October 1, 1984

ATTORNEY GENERAL OPINION NO. 84- 101

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

Re: Public Health -- Uniform Vital Statistics Act --
Disclosure of Records

Synopsis: State and local authorities may disclose vital statistics only as permitted by K.S.A. 65-2422. That statute generally limits disclosure of such information regarding identifiable persons to applicants who have a direct interest in the matter and who require the information to determine personal or property rights, but does not permit disclosure of such information for the purposes of general genealogical information or research. The limitations imposed by K.S.A. 65-2422 are applicable to state employees and officers and to persons who possess, store or in any way handle vital statistics records under contract with the state. The limitations do not distinguish between vital statistics collected before or after 1911 and we can perceive no basis for drawing such a distinction. Cited herein: K.S.A. 65-2401; 65-2407; 65-2422; L. 1984, ch. 282, §4(1); L. 1885, ch. 129, §5; L. 1911, ch. 296, §1; L. 1951, ch. 355, §22; G.S. 1949, §§65-144.

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Dear Mr. Snell:

On behalf of the Kansas State Historical Society you have requested our opinion on several questions relating to access to birth and death records maintained in Kansas. Your request springs from a proposal for a cooperative microfilming project offered to the Historical Society by the Genealogical Society of Utah (which is associated with the Church of Jesus Christ of Latter Day Saints). The proposed cooperative effort would permit the Utah Genealogical Society to microfilm local governmental records which have genealogical value. They are, naturally, particularly interested in vital statistics and you raise several questions about this aspect of the proposal. The Historical Society, in return for obtaining approval from local officials, would receive duplicate rolls of microfilm to be maintained at the society headquarters in Topeka. The society would in turn make the film available to researchers, local agencies and local historical societies.

You raise several questions concerning the legality of filming and making publicly available birth and death records maintained by various public officials throughout the state.

Your questions largely concern the application of the Uniform Vital Statistics Act (K.S.A. 65-2401 et seq.), which defines "vital statistics" to include:

" . . . the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to birth, adoption, legitimation, death, stillbirth, marriage, divorce, annulment of marriage, and data incidental thereto." K.S.A. 65-2401(1). (Emphasis added.)

The Kansas statutes specifically limit disclosure of such records in the following language found at K.S.A. 65-2422:

"(a) The records and files of the division of health pertaining to vital statistics shall be open to inspection, subject to the provisions of this act and regulations of the secretary; but it shall be unlawful for any officer or employee of the state to disclose data contained in vital statistical records, except as authorized by this act and the secretary and it shall be unlawful for anyone who possesses, stores or in any way handles vital statistics records under contract with the state to disclose any data contained in such records, except as authorized by law.

"(b) No disclosure of illegitimacy of birth or of information from which illegitimacy can be ascertained shall be made, except upon order of a court in a case where such information is necessary for the determination of personal or property rights and then only for such purpose, but the state registrar shall open the records of any person whose birth has been listed as illegitimate who has attained legal age and demands the opening.

"(c) The state registrar shall not permit inspection of the records or issue a certified copy of a certificate or part thereof unless he is satisfied that the applicant therefor has a direct interest in the matter recorded and that the information contained is necessary for the determination of personal or property rights. His decision shall be subject, however, to review by the secretary or a court under the limitations of this section.

"(d) The secretary shall permit the use of data contained in vital statistical records for research purposes only, but no identifying use thereof shall be made." (Emphasis added.)

This language is controlling and is not overridden by the Kansas Open Records Act, which specifically provides that a public agency is not required to disclose records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas Supreme Court. [L. 1984, ch. 282, §4(1)].

Thus, it is clear that vital statistics covered by K.S.A. 65-2422 may be disclosed only in limited circumstances. The statute permits disclosure when the applicant for disclosure has a direct interest in the matters recorded and the information sought is necessary for the determination of personal or property rights. Disclosure for the general genealogical research purposes described in your request does not appear to be such a circumstance.

Moreover, in Opinion No. 79-95 the Attorney General concluded that local authorities who gather or maintain records of vital statistics may disclose records of vital statistics only where there is a law authorizing such disclosure. Thus, vital statistics records in the possession of local authorities may not be disclosed except as authorized by K.S.A. 65-2422. See also K.A.R.

28-17-7. K.S.A. 65-2422 evinces a definite legislative intent that such records, whether maintained at the state or local level, should not be open to inspection by the general public and should be available to others only in limited circumstances. Attorney General Opinion No. 79-95 interpreted the language of K.S.A. 65-2422 to apply to all local registrars of vital statistics who are appointed by the State Registrar of Vital Statistics pursuant to K.S.A. 65-2407. The local registrar is usually also the city clerk, but the state registrar may appoint any competent person as the local registrar. The limitations of K.S.A. 65-2422 apply to "any officer or employee of the state" and "anyone who possesses, stores or in any way handles vital statistics records under contract with the state." Thus, any person, state officer or employee who has the responsibility, either by contract or under statute, to collect and maintain vital statistics (as defined by K.S.A. 65-2401) is subject to the limitations imposed by K.S.A. 65-2422.

You also inquire about the scope of application to be accorded to K.S.A. 65-2422. Although you indicate that there may be a distinction between vital statistics records created before and after 1911, we can perceive no basis for such a distinction regarding the application of K.S.A. 65-2422.

The responsibility for supervising the collection of vital statistics was first conferred upon the State Board of Health (the predecessor to the Kansas Department of Health and Environment) in 1885. The Laws of 1885, chapter 129, §5 provides:

"The state board of health shall supervise the registration of marriages, births and deaths . . . and the secretary of said board shall superintend the registration of vital statistics from the state. They shall prepare blank forms necessary for obtaining and preserving such records, and forward such of them to the health officers of local boards . . . and others whose duty it is to gather information in relation to the vital statistics of the state." (Emphasis added.)

Under the laws of 1885 local boards of health, physicians and property assessors were charged by state law to collect and report certain vital statistical information, as "required by the state board of health." [See L. 1885, ch. 129, §§9, 10]. In addition, the state board of health was required to make an annual written report to the governor "upon the vital statistics and the sanitary conditions and prospects of the state." (L. 1885, ch. 129, §11)

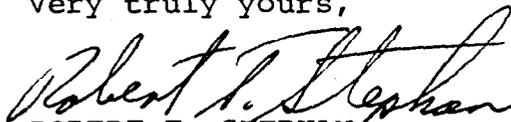
In 1911 the legislature created a central division of vital statistics in the State Board of Health in Topeka. (L. 1911, ch. 296, §1) The state board was charged with the "uniform and thorough enforcement of the law throughout the state," and was granted rule making authority. The laws of 1911 did not prescribe particular limitations upon access to vital statistics information. Later, the statutes provided that the state registrar was empowered to enact rules and regulations to provide for the delayed registration of persons born prior to July 1, 1911. (See G.S. 1949, §65-144.) In 1951, the legislature enacted the uniform vital statistics act which appears in the current statutes essentially unchanged. The limitations on access to such statistics which are in effect today were first imposed by the Laws of 1951, ch. 355, §22. Thus, it is clear that vital statistics have been collected and stored at the direction of state law since 1885. Those laws, however, did not limit access in the manner currently in use until 1951.

It is nonetheless our opinion that the limitations imposed by K.S.A. 65-2422 are applicable to all vital statistical information maintained by the state or local authorities which was collected at the direction of state law under the supervision of the state board of health or its successors or under contract with the state. The language of K.S.A. 65-2422 and the definition of "vital statistics" found in 65-2401 are so broad as to preclude any other conclusion. We can perceive no basis for drawing arbitrary distinctions between records collected before or after a certain year if those records were required to be recorded and maintained by state law and are presently possessed by persons covered by the language of K.S.A. 65-2422. While the language of K.S.A. 65-2422 does not make our conclusion an inevitable one, it does appear to be the most reasonable conclusion in view of the history and language of the applicable statutes. It is within the power of the legislature to permit vital statistics records to be available for genealogical purposes; however, at this time K.S.A. 65-2422 limits access to the individuals and circumstances stated in the statute.

Finally, you inquire as to records maintained by private entities, such as churches, cemeteries, private hospitals or funeral directors. Access to such records, maintained for purely private purposes, is a matter which must be determined on a private basis. The limitations of K.S.A. 65-2422 only apply to state officers and employees and persons who maintain vital statistical information on contract with the state. The fact that the information possessed by the private entities may also be maintained by the bureau of registration and health statistics does not affect the fact that access to private records will be controlled privately.

We accordingly conclude that state and local authorities may disclose vital statistics only as permitted by K.S.A. 65-2422. That statute generally limits disclosure of such information regarding identifiable persons to applicants who have a direct interest in the matter and require the information to determine personal or property rights, but does not permit disclosure of such information for the purposes of general genealogical information or research. The limitations imposed by K.S.A. 65-2422 are applicable to state employees and officers and to persons who possess, store or in any way handle vital statistics records under contract with the state. The limitations do not distinguish between vital statistics collected before or after 1911 and we can perceive no basis for drawing such a distinction.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary F. Carson
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