



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  
ANTITRUST: 296-5299

April 15, 1985

ATTORNEY GENERAL OPINION NO. 85- 36

Frances W. Austin  
Rooks County Appraiser  
Rooks County Courthouse  
Stockton, Kansas 67669

Re: Laws, Journals and Public Information -- Records Open  
to Public -- Certain Records Not Required to Be Open

Taxation -- Property Valuation, Equalization; Assessment --  
Records Open to Public Inspection

Synopsis: The Kansas Open Public Records Act, K.S.A. 1984 Supp. 45-215 et seq., establishes as a general policy of this state that public records shall be open for inspection by the public. While K.S.A. 1984 Supp. 45-221 creates certain categories of records which may be closed, such exceptions are effective only where disclosure is not required by other Kansas statutes. One such statute is K.S.A. 79-1458, which provides that all records of the county appraiser relating to the identification and appraisal of property shall be open to public inspection. Division of interests statements regarding oil or gas production used in assessing royalty owners are accordingly records subject to K.S.A. 79-1458, and so must be made open to inspection by the public, notwithstanding the provisions of the Open Records Act. Cited herein: K.S.A. 19-2601; K.S.A. 1984 Supp. 45-217; 45-221; K.S.A. 79-330; 79-1401; 79-1412a; 79-1458.

\*

\*

\*

Dear Ms. Austin:

As County Assessor for Rooks County, Kansas, you request our opinion on a question concerning the effect of the Kansas Open Records Act upon certain records which are kept by your office in the course of your official duties. Specifically, you state that you have received conflicting information regarding the public nature of division of interests in property producing oil or gas. This information is used by you in identifying percentage of ownership for the assessment of royalty and overriding royalty owners.

As set forth in your letter to us, the documents in question contain the owner's name, mailing address, owner number and percentage of ownership. In many cases, the documents are in the form of title opinions issued by attorneys. You further state that, in a number of cases, the royalty owners have requested that division of interest information be kept confidential. The Rooks County Attorney has informally indicated that you may honor these requests, based upon language in the Kansas Open Records Act, K.S.A. 45-215 et seq. However, you have received advice to the contrary from the Property Valuation Division of the Department of Revenue, based upon the language of K.S.A. 79-1458. Accordingly, you request our opinion.

The Kansas Open Records Act, as amended in 1984, clearly establishes that, unless otherwise specifically provided by law, records maintained by public agencies in this state are to be open for public inspection and, if desired, copying. "Public Record" is defined in K.S.A. 1984 Supp. 45-217(f)(1) as "Any recorded information regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency." "Public Agency" in turn is defined at K.S.A. 1984 Supp. 45-217(e)(1) as "the state or any political or taxing subdivision of the state, or any office, officer, agency or instrumentality thereof, . . . receiving or expending and supported in whole or in part by public funds . . . ." Clearly, the county appraiser's office falls within the definition of a public agency. Consequently, records kept by the appraiser would qualify as public records.

Exceptions to this general "openness" policy are contained in K.S.A. 1984 Supp. 45-221, and provide that a public agency shall not be required to disclose records which fall into one of thirty-five enumerated categories. However, it is important to note that this statute does not contain a prohibition against

disclosure, but rather leaves the decision to the discretion of the agency. In addition, the statute prefaces the exceptions with the statement that they are applicable only where disclosure is not otherwise required by law.

Four different paragraphs contained in subsection (a) of K.S.A. 1984 Supp. 45-221 have been mentioned as providing a basis for the exercise of such discretion by your office. They state as follows:

"(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

. . . . .

"(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

. . . . .

"(25) Records which represent and constitute the work product of an attorney.

. . . . .

"(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

Although it is our opinion that none of the four exceptions cited above would apply to this situation, where information concerning

the assessment and taxation of property is voluntarily provided by either royalty owners or their counsel, it is unnecessary to discuss each in detail, given the existence of another statute which expressly declares that records of the appraiser shall be open to the public. This statute, K.S.A. 79-1458, provides:

"The county appraiser shall install and maintain such records and data relating to the identification and appraisal of all property in the county, taxable and exempt, required by the director of property valuation.

"Except as specifically provided by law, all

records of the county appraiser, the county board of equalization and the director of property valuation relating to the identification and appraisal of real and personal property shall be open at all reasonable times to public inspection."

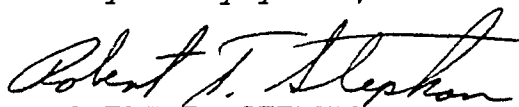
(Emphasis added.)

There can be no question but that royalty interests are property interests. K.S.A. 79-330; Rathbun v. Williams, 154 Kan. 601 (1942). Therefore, a division of interest statement would be a record "relating to the identification of real and personal property," and should be open to public inspection. Nor do we think it relevant that the division of interest statements are provided voluntarily to the appraiser, for the state, acting through the appraiser, has the right to request such information from property owners (K.S.A. 79-1404, Sixth, 79-1412a, First) for the express purpose of determining value and so assisting in the taxation process. See also K.S.A. 19-2601 ("all books and papers required to be in [a county official's office] shall be open for the examination of any person.") Accordingly, in view of these express statutes requiring public access, the discretionary categories of K.S.A. 1984 Supp. 45-221 do not apply.

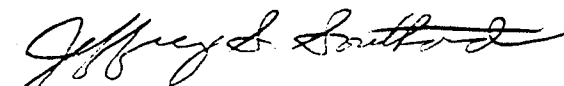
In conclusion, the Kansas Open Public Records Act, K.S.A. 1984 Supp. 45-215 et seq., establishes as a general policy of this state that public records shall be open for inspection by the public. While K.S.A. 1984 Supp. 45-221 creates certain categories of records which may be closed, such exceptions are effective only where disclosure is not required by other Kansas statutes. One such statute is K.S.A. 79-1458, which provides that all records of the county appraiser relating to the identification and appraisal of property shall be open to public

inspection. Division of interest statements regarding oil or gas production used in assessing royalty owners are accordingly records subject to K.S.A. 79-1458, and so must be made open to inspection by the public, notwithstanding the provisions of the Open Records Act.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Deputy Attorney General

RTS:JSS:crw