



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 100

Timothy J. Chambers
Reno County Attorney
Law Enforcement Center
210 West First Street
Hutchinson, Kansas 67501

Re: Crimes and Punishments -- Crimes Affecting
Governmental Functions -- Unlawful Disclosure of a
Warrant; Disclosure of Filed Complaint Leading to
the Issuance of a Warrant

Criminal Procedure -- Preliminary Proceedings --
Issuance of Search Warrants; Disclosure of Filed
Complaint Leading to the Issuance of a Warrant

Laws, Journals and Public Information -- Records
Open to Public -- Disclosure of Filed Complaint
Leading to the Issuance of a Warrant.

Synopsis: The crime "Unlawful Disclosure of a Warrant"
prohibits disclosure, before execution of a
warrant, of a complaint which led to the issuance
of an arrest warrant. Cited herein: K.S.A. 1986
Supp. 20-301a; 21-3827; 22-2202; K.S.A. 22-2301;
K.S.A. 1986 Supp. 22-2302; K.S.A. 45-215; 45-217;
45-218; 45-221.

* * *

Dear Mr. Chambers:

As Reno County Attorney, you request our opinion whether
K.S.A. 1986 Supp. 21-3827, unlawful disclosure of a warrant,

precludes disclosure, before execution of a warrant, of a filed complaint which led to the issuance of an arrest warrant. We understand it has been your experience on several occasions that information that charges had been filed against an individual was released to the public before the warrant (based on the complaint) for the arrest of the individual was executed.

The Kansas Open Records Act (KORA), K.S.A. 45-215 et seq., provides that all records made, maintained, kept by, and in the possession of a public agency are subject to public disclosure, unless otherwise provided. K.S.A. 45-217(f); 45-218. Judges are exempted from the definition of "public agency." K.S.A. 45-217(e). One of the exceptions to mandatory disclosure under the KORA is as follows:

"(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

"(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure." K.S.A. 45-221.

K.S.A. 1986 Supp. 21-3827 prohibits the disclosure of certain information before an arrest or search warrant is executed:

"An unlawful disclosure of a warrant is making public in any way, except at the request of a law enforcement officer for the purpose of assisting in the execution of such warrant, the fact that a search warrant or warrant for arrest has been applied for or issued or the contents of the affidavit or testimony on which such warrant is based, prior to the execution thereof but the above shall not apply to personnel of a law enforcement agency disclosing a warrant: (1) For the purpose of encouraging the person named in the warrant to voluntarily surrender; or (2)

issued in a case involving the abduction of a child unless such disclosure is specifically prohibited by the court issuing such warrant.

An unlawful disclosure of a warrant is a class B misdemeanor." (Emphasis added).

The question is whether the crime "Unlawful Disclosure of a Warrant" precludes disclosure of a complaint which led to the issuance of an arrest warrant.

A prosecution is commenced by filing a complaint with a magistrate. K.S.A. 22-2301; State ex rel. Rome v. Fountain, 234 Kan. 943, 948 (1984). A "complaint" is defined under the criminal code as "a written statement under oath of the essential facts constituting a crime" K.S.A. 1986 Supp. 22-2202(8). "Magistrate" is defined as follows:

"'Magistrate' means an officer having power to issue a warrant for the arrest of a person charged with a crime and includes justices of the supreme court, judges of the court of appeals and judges of district courts." K.S.A. 1986 Supp. 22-2202(14).

K.S.A. 1986 Supp. 20-301a provides that, in the statutes concerning district courts, the term "judge of the district court" includes magistrate judges. Magistrates are granted authority under K.S.A. 1986 Supp. 22-2302 to issue arrest warrants:

"If the magistrate finds from the complaint, or from an affidavit or affidavits filed with the complaint or from other evidence, that there is probable cause to believe both that a crime has been committed and that the defendant committed it, a warrant for the arrest of the defendant shall issue" (Emphasis added).

In State v. Abu-Isba, 235 Kan. 851, 853-84 (1984), the Kansas Supreme Court adopted the "totality of the circumstances" approach of Illinois v. Gates, 462 U.S. 213 (1983), to determine whether probable cause exists:

"Before a warrant for arrest or search may be issued, there must be a finding of probable cause by a neutral and detached magistrate. The complaint should supply the magistrate with sufficient factual information to support an independent judgment that probable cause exists. Mere conclusions are not sufficient to support such a finding. [citation omitted]. Probable cause is the reasonable ground for belief that a specific crime has been committed and that the defendant has committed or is committing it. Under K.S.A. 1983 Supp. 22-2302(1) probable cause information may be set forth in separate affidavits filed with the complaint." (Emphasis added).

See State v. Breazeale, 238 Kan. 714, 725-26 (1986). Sufficient factual information to enable a magistrate to make an "impartial and detached finding of probable cause" can be supplied by the complaint, or by affidavits or other evidence filed with the complaint. K.S.A. 1986 Supp. 22-2302; Wilbanks v. State, 224 Kan. 66, 76 (1978).

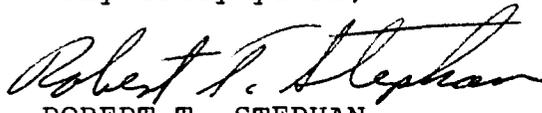
Since the term "public agency" does not include judges, a magistrate's records are not subject to disclosure. Therefore, a complaint filed with a magistrate is not at that point a record required to be disclosed. If the complaint is submitted to secure an arrest warrant, the question is whether the magistrate may make the complaint public before the warrant has been executed. It is our opinion that K.S.A. 1986 Supp. 21-3827 prohibits the disclosure of a complaint which led to the issuance of an arrest warrant.

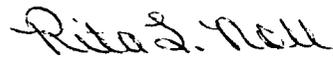
The crime "unlawful disclosure of a warrant" is making public prior to execution the fact that an arrest warrant "has been applied for or issued or the contents of the affidavit or testimony on which the warrant is based" K.S.A. 1986 Supp. 21-3827. A magistrate may issue an arrest warrant if the magistrate finds probable cause from information contained in the complaint or complaint and affidavits or other evidence. K.S.A. 1986 Supp. 22-2302. We must conclude that a complaint relied upon by a magistrate to issue an arrest warrant is part of the application for the warrant. K.S.A. 1986 Supp. 21-3827 does not specifically state that a complaint cannot be disclosed before execution of a warrant. However, since the complaint and/or affidavits supply the

necessary information to find probable cause, the complaint is essentially the prosecutor's "testimony on which [the] warrant is based." K.S.A. 1986 Supp. 21-3827 (emphasis added). In addition, disclosure of a complaint prior to execution of the warrant in all practicality reveals the fact that a warrant has been applied for or issued. The purpose of K.S.A. 21-3827 is to prevent individuals from being forewarned that law enforcement officials will be seeking their arrest.

In summary, it is our opinion that the crime "Unlawful Disclosure of a Warrant" prohibits disclosure, before execution of a warrant, of a complaint which led to the issuance of an arrest warrant.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Rita L. Noll
Assistant Attorney General

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