



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 88- 152

The Honorable James E. Lowther
State Representative, Sixteenth District
1549 Berkeley Road
Emporia, Kansas 66801

Re: Elections -- Registration of Voters -- Disclosure
of Voter Registration List

Laws, Journals and Public Information -- Records
Open to Public -- Voter Registration List; Lists on
Computers

Synopsis: Pursuant to the Kansas open records act, any person
has the right to obtain a computerized voter
registration list in computer format if the public
agency has the capability of providing the record
in that format. Cited herein: K.S.A. 45-215;
45-216; 45-217; 45-219; 45-220; K.S.A. 1987 Supp.
45-221.

* * *

Dear Representative Lowther:

As State Representative, you ask our opinion concerning voter
registration lists. Your inquiry is whether, if a county's
voter registration list is computerized, the county election
officer is required, upon request, to provide a copy of the
list on a floppy disc or in other computer-readable form
rather than in the form of a computer print-out.

To answer your question, the Kansas open records act (KORA), K.S.A. 45-215 et seq., must be examined. The KORA provides that public records of public agencies must "be open for inspection by any person. . . ." K.S.A. 45-216(a). The office of county election officer (generally, the county clerk) is a "public agency" as defined in the act. K.S.A. 45-217(e) (1). A list of registered voters is a "public record." K.S.A. 45-217(f) (1). The KORA is "liberally construed and applied to promote" the policy of open public records. K.S.A. 45-216(a).

The open records law provides that persons not only have the right to inspect, but also the right to obtain copies of public records. K.S.A. 45-219(a). The procedures and requirements for gaining access to records, obtaining copies of records, and charging fees for copies are contained in K.S.A. 45-219 and K.S.A. 45-220. Clearly, any person has the right to obtain a computer print-out of the voter registration list, or a photocopy of such list. The question presented is whether a person has the right to obtain the information in computer format.

While the KORA does not specifically address this issue, the statutes refer to the use and copies of computerized documents. The statute concerning fees for copies provides as follows:

"In the case of fees for providing access to records maintained on computer facilities, the fees shall include only the cost of any computer services, including staff time required." K.S.A. 45-219(c) (2).

A public agency is not required to disclose its software programs. However, the agency must maintain and make available to the public a register which describes

"the form in which the information can be made available using existing computer programs." K.S.A. 1987 Supp. 45-221(a) (16) (B).

The above-quoted statute implies that a public agency must upon request make duplications of records in any format which it has the capability of producing. The requestor, of course, must pay the fee involved and comply with the statutory requirements and other regulations necessary to safeguard the

record. Based on the open records statutes, the liberal interpretation given to such statutes, and case law from other jurisdictions, it is our opinion that the public has a right to obtain a copy of a computerized voter registration list in computer form.

A case almost identical to the situation before us is Ortiz v. Jaramillo, 483 P.2d 500 (N.M. 1971). In that case the court ordered the county clerk to furnish an individual a magnetic tape of the voter registration record.

"We are unable to understand why the right to inspect public records should not carry with it the benefits arising from improved methods and techniques of recording and utilizing the information contained in these records, so long as proper safeguards are exercised as to their use, inspection, and safety." 483 P.2d at 501.

In Blaylock v. Staley, 732 S.W.2d 152, 154 (Ark. 1987), the court inferred that a copy of magnetic tape containing a voter registration list must be provided to a requestor if the copy can be produced by the agency without removing the data module from the office to some outside location for copying. The court in Mengo v. City of Manchester, 311 A.2d 116 (N.H. 1973), ruled that a requestor was entitled to a computerized tape of field record cards compiled by the city for use in arriving at real estate tax assessments.

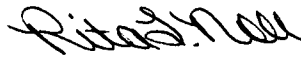
"The ease and minimal cost of the tape reproduction as compared to the expense and labor involved in abstracting the information from the field cards are a common sense argument in favor of the former. [New Hampshire law] provides that every citizen may 'make memoranda abstracts, photographic or photostatic copies' of public records. 'Taking into account the practical realities of the situation, we believe it not only possible, but in accord with our law and what seems to be its basic philosophy, to so construe the statute as to permit' plaintiff to have the reproduced tapes at his expense. [Citations omitted]." 311 A.2d at 119.

In summary, pursuant to the Kansas open records law, any person has the right to obtain a computerized voter registration list in computer format if the public agency has the capability of providing the record in that format.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General

RTS:JLM:RLN:bas