



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89-46

The Honorable Harland E. Priddle
Secretary
Kansas Department of Commerce
400 SW 8th, 5th Floor
Topeka, Kansas 66603

Re: State Boards, Commissions and Authorities --
Department of Commerce -- Low-Income Housing Tax
Credit Program; Records Subject to Disclosure

Laws, Journals and Public Information -- Records
Open to Public -- Department of Commerce;
Low-Income Housing Tax Credit Program

Synopsis: Documents of the Kansas Department of Commerce
involving the federal low-income housing tax credit
program are required by state and federal law to be
kept confidential as they concern federal tax
return information. Therefore, these documents are
not subject to public disclosure under the Kansas
Open Records Act. Cited herein: K.S.A. 45-215;
45-216; 45-217; K.S.A. 1988 Supp. 45-221; 79-3234;
26 U.S.C. § 42; 26 U.S.C. § 6103.

* * *

Dear Secretary Priddle:

You inform us that the Kansas Department of Commerce (KDOC)
administers the federal low-income housing tax credit program
for the State of Kansas. This program was established by the
federal Tax Reform Act of 1986, 26 U.S.C. § 42. Federal tax
credits are offered which reduce tax liability to owners and
investors in eligible low-income residential rental housing
projects. The tax credits can be used in conjunction with the

acquisition, rehabilitation, or new construction of residential rental housing projects.

In administering the program, KDOC follows the following procedure. An applicant must complete and submit an application form to KDOC. Upon a favorable review, KDOC issues a reservation which sets aside a specified amount of credits to the applicant for a project. Once the project is placed in service, the applicant submits documentation certifying the actual costs of the project. KDOC then computes the amount of tax credits to be allocated to the applicant, based on the financial information supplied by the applicant and the applicable percentage provided by the Internal Revenue Service (IRS). A federal tax form, Form 8609, is completed by KDOC, which effectuates the allocation of tax credits.

You ask our opinion whether KDOC must disclose to the public, upon request, documents concerning the low-income housing tax credit program. These documents include the application form, the reservation form, which specifies the amount of credits to the applicant if approved, and federal tax Form 8609. These and other documents contain financial information of a project and the calculation by KDOC to determine the amount of federal tax credits to be allocated.

The Kansas open records act (KORA), K.S.A. 45-215 et seq., provides that public records of public agencies must "be open for inspection by any person. . . ." K.S.A. 45-216(a). KDOC is a public agency as defined in K.S.A. 45-217(e)(1). A "public record" is "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency." K.S.A. 45-217(f)(1). Thus, the records in question are public records. Not all public records, however, are required to be open for public inspection. K.S.A. 1988 Supp. 45-221(a)(1) provides that records, the disclosure of which is prohibited or restricted by law, are not subject to disclosure under the KORA. In addition, K.S.A. 1988 Supp. 45-221(a)(2)-(36) lists exceptions in which a public agency may, in its discretion, keep certain records confidential.

K.S.A. 1988 Supp. 79-3234(b) prohibits the disclosure of the amount of income or any particulars provided in state or federal income tax returns:

"[I]t shall be unlawful for [any employee of the department of revenue] or any other state officer or employee . . . to divulge, or to make known in any way, the

amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information required under this act. . . ." (Emphasis added).

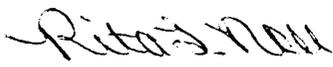
In addition, federal law provides that returns and return information are confidential, and that no officer or employee of the United States or any state shall disclose this information. 26 U.S.C. § 6103. "Return" is defined as any "tax or information return, declaration of estimated tax, or claim for refund . . . including supporting schedules, attachments, or lists which are supplemental to, or part of, the return. . . ." 26 U.S.C.A. § 6103(b)(1). "Return information" is defined, in pertinent part, as follows:

"(A) A taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld . . . or any other data, received by, recorded by, . . . furnished to, or collected by the Secretary with respect to a return. . . ." 26 U.S.C.A. § 6103(b)(2). (Emphasis added).

We have examined the documents in question regarding the federal low-income housing tax credit program. The whole of the documents concern information which is required by state and federal law to be kept confidential. Therefore, these records are not subject to disclosure under the KORA. K.S.A. 1988 Supp. 45-221(a)(1).

Very truly yours,


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