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ATTORNEY GENERAL OPINION NO. 2025-8

Angela J. Lawson
Acting Chief Counsel
Unified Government of Wyandotte County/Kansas City
701 North Seventh Street, 9th Floor
Kansas City, Kansas 66101

Re: Cities and Municipalities—Miscellaneous Provisions

Crimes and Punishments—Kansas Criminal Code—Crimes Against
Persons

Statutes; Administrative Rules and Regulations and Procedure—
Statutory Construction

Synopsis: The Kansas City, Kansas Community Identification Act adopted by the Unified Government does not facially violate K.S.A. 21-5432(a)(1). Because the person providing a Community ID card would not necessarily know an applicant's immigration status, the person would likely lack the mens rea required under K.S.A. 21-5432(a)(1)(A). Additionally, it would be difficult for anyone to violate K.S.A. 21-5432(a)(1)(C) because it is unlikely the person providing the Community ID card as provided in the ordinance would ever know an applicant was being exploited for the financial gain of another. However, it is possible, in particular instances where this information is known, issuance of the card could violate the law.

A similar reasoning applies to a person possessing the Community ID card. Because a Community ID card does not purport to establish a person's legal presence in the United States, and because a

Community ID card applicant must give identifying and residence information to a government entity, mere possession of a Community ID card cannot amount to the bearer harboring or concealing oneself.

However, the Community ID card program does implicate 8 U.S.C. § 1324(a)(1)(A)(iv), which makes it a crime to “encourage[] or induce[] an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.” The Unified Government clearly intended to facilitate the continued unlawful presence of illegal aliens when it acted to create the Community ID card program. The program therefore stands as an obstacle to accomplishment of Congress’s objectives and is likely preempted.

The ordinance is also subject to the provisions of K.S.A. 77-207 as the ordinance requires the collection of “vital statistics.” Cited herein: K.S.A. 12-16,139; K.S.A. 12-16,140; K.S.A. 12-16,142; K.S.A. 21-5108; K.S.A. 21-5202; K.S.A. 21-5432; K.S.A. 77-207; 8 U.S.C. § 1324.

* * *

Dear Ms. Lawson:

As Acting Chief Counsel for the Unified Government of Wyandotte County/Kansas City, you ask three questions involving ordinance O-77-22, the Kansas City, Kansas Community Identification Act:

1. Whether providing a Community ID card under the ordinance violates K.S.A. 21-5432(a)(1)(A).
2. Whether possessing a Community ID card under the ordinance violates K.S.A. 21-5432(a)(1)(A).
3. Whether K.S.A. 77-207(c) applies to a Community ID card issued in accordance with the ordinance if law enforcement officers accept the card as proof of identity and residency.

K.S.A. 21-5432(a)(1) states:

(a)(1) Human smuggling is intentionally transporting, harboring or concealing an individual into or within Kansas when the person:

(A) Knows, or should have known, that the individual is entering into or remaining in the United States illegally;

(B) benefits financially or receives anything of value; and

(C) knows, or should have known, that the individual being smuggled is likely to be exploited for the financial gain of another.

We conclude that providing a Community ID card does not facially violate K.S.A. 21-5432(a)(1). A Community ID card does not harbor or conceal an illegal alien. In fact, a Community ID card would reveal the identity of a cardholder to government officials. A Community ID card does not purport to claim the person is in the country legally. The ordinance provides an applicant with several methods to prove identity and residency without revealing that person's immigration status. As such, the person who provides a Community ID card under the ordinance to the applicant will most likely lack the required knowing mental state under Subsection (a)(1)(A). Additionally, it is very unlikely Subsection (a)(1)(C) would ever be met as it requires a person to know the individual being smuggled is likely to be exploited for the financial gain of another.

Possessing a Community ID card similarly does not violate K.S.A. 21-5432(a)(1). The statute contemplates a person acting on behalf of another. It identifies the violator ("the person") acting upon someone else ("the individual"). K.S.A. 21-5432(a)(1)(A) does not contemplate the illegal alien's own actions he or she takes to remain in the country. Actions by two people are required to satisfy the statute.

Finally, we conclude that K.S.A. 77-207(c) does apply to the Community ID card program because the ordinance requires law enforcement officers in the county to accept the ID cards as proof of identity and residency, which are vital statistics that must be maintained by local law enforcement agencies. The Unified Government must keep an accurate data set which identifies each individual by his or her biological sex at birth. Because a Community ID card is a reflection of the data set, any designation of sex on the card must accurately reflect the data set and display the cardholder's biological sex at birth.

Background

In February 2022, the Unified Government adopted an ordinance that authorized the provision of municipal ID cards to residents and prohibited local law enforcement agencies from assisting with federal immigration investigations.¹ Municipal communications on the matter explicitly stated that the ID program was "designed to assist undocumented immigrants who cannot obtain state-issued IDs because they lack key documents."²

Shortly thereafter, the Legislature passed H.B. 2717, which prevents municipalities from enacting, implementing, or enforcing an ordinance that restricts law

¹ Wyandotte Cty./Kan. City, Kan., Ordinance O-19-22 (Feb. 22, 2022).

² Press Release, Unified Gov't, Commission to Consider Safe & Welcoming City Act (Feb. 4, 2022), *available at* <https://www.wycokck.org/Engage-With-Us/News-articles/Safe-and-Welcoming#:~:text=Non%2Ddiscrimination,covers%20a%20Community%20ID%20program.>

enforcement or local officials from cooperating with the enforcement of federal immigration laws.³ H.B. 2717 did not outlaw municipal ID cards. Rather, it explained that municipal ID cards could “not be used to satisfy any requirement of state law for proof of identity” and that each such card must “state on its face the statement ‘Not valid for state ID.’”⁴

As a consequence of H.B. 2717, the Unified Government repealed its prior ID card ordinance and replaced it with Ordinance O-77-22. That new ordinance removed the former prohibitions on assisting with federal immigration enforcement,⁵ but otherwise retained the core of the previous ID card program; the Unified Government continues to issue identification cards to those who satisfactorily establish identity and residence in the county.⁶ The card must “display the cardholder’s photograph, name, date of birth, address, an expiration date and the statement ‘Not valid for state ID.’”⁷ The cardholder also has the option of displaying his or her self-designated gender.⁸

At present, the only valid use of the county-issued ID seems to be in dealings with the Unified Government: “[a]ll Unified Government agencies and offices, and all municipal employees, including law enforcement officers, shall accept such card as proof of identity and residency.”⁹ But the ordinance goes on to say “[t]he Unified Government shall seek to expand the benefits associated with the community ID card, including encouraging eligible persons to apply for the card and promoting the acceptance of the community ID card by banks and other public and private institutions.”¹⁰

³ K.S.A. 12-16,140(a).

⁴ K.S.A. 12-16,142.

⁵ The ordinance explicitly says that nothing in the “ordinance will preclude the [police department] from assisting or participating in judicial warrants and criminal investigations.” § 18-164(a). And, elsewhere, the ordinance says its prohibitions don’t apply when something different is “required by Federal or state statute, regulation, or court decision.” § 18-163(a); *accord id.* §18-168. However, the ordinance does not require more than this basic compliance, explicitly stating “[i]t is not the mission of the [police department] to enforce federal immigration law,” Wyandotte Cty./Kan. City, Kan. Code § 18-164(1)(a), and prohibits city employees from “[r]equir[ing] individuals to provide specific immigration identification.” *Id.* § 18-163(1)(b)

⁶ *See id.* § 18-165(a)(6) (listing approved documents for establishing identity and residence). The ordinance also includes an open-ended acceptance of “any other documentation that the Program Administrator deems acceptable” to prove identity and residency. *Id.* at (a)(6)(1)(b)(xix), (a)(6)(2)(xiii).

⁷ *Id.* § 18-162.

⁸ *Id.*

⁹ *Id.* § 18-165(b)(1). The only exceptions are “the election commissioner, his or her appointees, and any election board members or employees.” *Id.*

¹⁰ *Id.* § 18-165(b)(2).

Analysis

1. K.S.A. 21-5432(a)

Your first two questions relate to K.S.A. 21-5432(a)(1), specifically whether providing or possessing a Community ID card necessarily violates subsection (a)(1)(A) of that statute. We believe the answer is no.

Resolution of your questions requires statutory interpretation. Statutory interpretation begins with the statutory text, giving words their ordinary and everyday meanings.¹¹ Only when the statutory language is ambiguous do Kansas courts turn to canons of construction or legislative history.¹²

K.S.A. 21-5432 is a relatively new statute (passed in 2023) that established the crime of “human smuggling.”

Human smuggling is intentionally transporting, harboring or concealing an individual into or within Kansas when the person:

(A) Knows, or should have known, that the individual is entering into or remaining in the United States illegally;

(B) benefits financially or receives anything of value; and

(C) knows, or should have known, that the individual being smuggled is likely to be exploited for the financial gain of another.¹³

The statutory text shows that providing or possessing a Community ID card does not violate K.S.A. 21-5432(a)(1). An individual must be “intentionally” transported, harbored, or concealed.¹⁴ An intentional act requires that it be the “person’s conscious objective or desire to engage in the conduct or cause the result.”¹⁵ Kansas statutes do not define transport, harbor, or conceal. Dictionaries are a good source “to discern the ordinary, contemporary, and common meaning of a word.”¹⁶ Harbor means (1) “to serve as, or provide, a place of protection to; shelter or house; conceal

¹¹ *Bruce v. Kelly*, 316 Kan. 218, 224, 514 P.3d 1007 (2022).

¹² *State v. Smith*, 311 Kan. 109, 113, 456 P.3d 1004 (2020).

¹³ K.S.A. 21-5432(a)(1).

¹⁴ K.S.A. 21-5432(a)(1).

¹⁵ K.S.A. 21-5202(h).

¹⁶ *State v. Hambright*, 318 Kan. 603, 608, 545 P.3d 605 (2024).

or hide” or (2) “to be a dwelling place or habitat.”¹⁷ Conceal means (1) “to put out of sight; hide or (2) “to keep from another’s knowledge; keep secret.”¹⁸

The Community ID card program does not harbor or conceal an illegal alien.¹⁹ Harboring requires an actor to shelter or house another person. Concealing requires an act of hiding the individual from others. An individual who is provided with a Community ID card is not given shelter or hidden from government authorities. In fact, it actually reveals the identity of a cardholder to officials, as that person would then possess a legal government ID card, which provided the government with that person’s identifying information. By its own terms, a community ID card may be issued to any resident “regardless of his or her . . . national origin, alienage or citizenship status.” A person’s immigration status is not relevant to the issuance of a Community ID card, and a Community ID card does not purport to claim the person is in the country legally. Therefore, a Community ID card does not serve as proof as to the cardholder’s immigration status.

Subsection (a)(1)(A) requires that the person “know” or “should have known” the individual entered or remained in the United States illegally. A person acts knowingly with respect to the nature of the person’s conduct “when such person is aware of the nature of such person’s conduct.”²⁰ A person acts knowingly with respect to the result of their conduct “when such person is aware that such person’s conduct is reasonably certain to cause the result.”²¹ In this case, the nature and result of the conduct would be the immigration status of an illegal alien.

The ordinance requires applicants to provide proof of identity and proof of residence.²² The ordinance provides a long list of acceptable methods to establish a person’s identity, as well as a list of secondary documents if the traditional documents are unavailable.²³ Either list provides an applicant with several options to establish identity without revealing the applicant’s immigration status, such as a medical insurance ID card and a student ID card to establish an applicant’s

¹⁷ Webster’s New College World Dictionary 660 (5th ed. 2014); see also *Lozano v. City of Hazleton*, 620 F.3d 170, 223 (3d Cir. 2010), *judgment vacated by City of Hazleton, Pa. v. Lozano*, 563 U.S. 1030 (2011) (defining harbor in a similar federal statute as “tending to substantially facilitate an alien’s remaining in the United States illegally and to prevent government authorities from detecting the alien’s lawful presence”). The Third Circuit has noted that “harboring” “requires some act of obstruction that reduces the likelihood the government will discover the alien’s presence.” *Lozano*, 620 F.3d at 223 (finding it “highly unlikely” that the renting of an apartment to an illegal alien, without more, would satisfy the definition of harboring).

¹⁸ Webster’s New World College Dictionary 307 (5th ed. 2014).

¹⁹ The ordinance does not suggest any sort of movement that would suggest “transporting” is an issue here.

²⁰ K.S.A. 21-5202(i).

²¹ *Id.*

²² Sec. 18-165(a)(6)(1)(a), (a)(6)(1)(b), (a)(7)(2).

²³ *Id.* at (a)(6)(1)(a), (a)(6)(1)(b).

identity.²⁴ Similarly, proof of residency in Wyandotte County can be established with many common documents that show the person's address within Wyandotte County without revealing an applicant's immigration status.²⁵ Beyond that, the Program Administrator is authorized to create additional methods to permit homeless individuals to establish residency.²⁶ Given that there are several different paths of establishing identity and residency, a person who provides a Community ID card under the ordinance to an applicant will, in most circumstances, likely lack the required "knowing" mental state in regards to the applicant "entering into or remaining in the United States illegally," absent direct personal knowledge of the applicant or from the applicant telling them.²⁷

But, even if subsection (a)(1)(A) is satisfied, this would not mean that that individual would be guilty of human smuggling by providing a Community ID card to an illegal alien. K.S.A. 21-5432(a)(1) requires three elements be met to constitute human smuggling.

K.S.A. 21-5432(a)(1)(B) requires the person who is transporting, harboring, or concealing an individual to benefit financially or receive anything of value. While the ordinance does provide for a fee to obtain the Community ID card, that fee is paid to the Unified Government, not the person providing the ID card.²⁸ So an individual would not violate (a)(1)(B) for issuing Community ID cards in the manner provided by the ordinance.²⁹

But, most especially, it would be difficult for the Community ID card program to ever satisfy K.S.A. 21-5432(a)(1)(C). Subsection (a)(1)(C) requires the person "knows, or should have known, that the individual being smuggled is likely to be exploited for the financial gain of another." Absent the unlikely event of someone informing a government employee that he or she is being exploited for financial gain, it is hard to imagine how this element could be satisfied by providing a Community ID card to a qualifying applicant. Thus, even if (a)(1)(A), as you ask, is somehow satisfied in a specific instance, providing a Community ID card under the

²⁴ Both the proof of identity and proof of residency include an open-ended acceptance of "any other documentation that the Program Administrator deems acceptable. *Id.* at (a)(6)(1)(b)(xix), (a)(6)(2)(xiii).

²⁵ *Id.* at (a)(6)(2).

²⁶ *Id.* at (a)(7).

²⁷ K.S.A. 21-5432(a)(1)(A).

²⁸ Sec. 18-165(a)(4).

²⁹ It is a different question, however, whether the Unified Government as a whole or the program administrator could violate Subsection (a)(1)(B), as, by collecting fees, it would be "benefit[ing] financially or receiv[ing] anything of value" in exchange for its Community ID cards. It is not necessary to answer this issue here because even if the Unified Government could violate (a)(1)(B) by issuing Community ID cards to illegal aliens, it still would not violate the other two necessary elements for the reasons described in the opinion.

ordinance would not rise to the level of human smuggling because (a)(1)(C) would not be met.

Possessing a Community ID card also would not violate K.S.A. 21-5432(a)(1). As described above, Community ID cards do not harbor or conceal an illegal alien. Further, the statute contemplates a person acting on behalf of another. It identifies the violator (“the person”) acting upon someone else (“the individual”). K.S.A. 21-5432(a)(1)’s plain language does not contemplate the illegal alien’s own actions he or she takes to remain in the country. It plainly requires two people to satisfy the statute. Thus, possessing a Community ID card does not violate K.S.A. 21-5432(a)(1) when the possessor knows he or she is in the country illegally.

2. 8 U.S.C. § 1324(a)(1)(A)

In reviewing your questions, we also recognize that a similar federal statute exists—8 U.S.C. § 1324(a)(1)(A)(iii), (iv), and (v)(II). This statute makes it a crime for any person who:

(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; [or]

....

(v)(II) aids or abets the commission of the preceding acts.

The Community ID card program does not violate 8 U.S.C. § 1324(a)(1)(A)(iii). Section 1324(a)(1)(A)(iii) requires a person to conceal, harbor, or shield from protection an illegal alien. As discussed with K.S.A. 21-5432, proving a Community ID card does not harbor, conceal, or shield from detection an illegal alien. Instead, the person reveals a cardholder to the authorities. As the Community ID card does not serve as proof of a person’s immigration status, as well as that it can be obtained without revealing such status, providing or possessing a Community ID card is not concealing, harboring, or shielding from detection an illegal alien.

However, the Community ID card program does implicate 8 U.S.C. § 1324(a)(1)(A)(iv). “Encouraging” and “inducing” refer to actions taken to convince an illegal alien to come to this country or to remain in the country. Although the Tenth Circuit has yet to opine on the scope of 8 U.S.C. § 1324(a)(1)(A)(iv), it is

possible that the Community ID card program could be covered. The terms “encourage” or “induce,” which are another way to say solicit and facilitate, require an intent to bring about a particular unlawful act.³⁰ The Unified Government clearly intended to facilitate the continued unlawful presence of illegal aliens when it acted to create the Community ID card program. As noted above, municipal communications on the matter explicitly stated that the ID program was “designed to assist undocumented immigrants who cannot obtain state-issued IDs because they lack key documents.”

In addition to the apparent conflict with 8 U.S.C. § 1324(a)(1)(A)(iv), we also believe that the Community ID card program is likely preempted by federal immigration law more generally. “The ordinary principles of preemption include the well-settled proposition that a state law is preempted where it ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’”³¹ Congress has enacted a comprehensive scheme governing immigration into the United States, and 8 U.S.C. § 1324 specifically criminalizes conduct that facilitates illegal immigration in various ways. Because the purpose of the Community ID card program is to facilitate illegal immigration, the program stands as an obstacle of the accomplishment of Congress’s objectives.

3. K.S.A. 77-207(c)

Finally, you ask whether K.S.A. 77-207(c) applies to Community ID cards issued under the ordinance. We conclude that it does.

K.S.A. 77-207(c) states that:

(c) Any school district, or public school thereof, and any state agency, department or office or political subdivision that collects vital statistics for the purpose of complying with anti-discrimination laws or for the purpose of gathering accurate public health, crime, economic or other data shall identify each individual who is part of the collected data set as either male or female at birth.

The Unified Government is a “political subdivision” of the State of Kansas.³² The ordinance requires the Unified Government to contract with a 501(c)(3) organization to administer the day-to-day operations of the program.³³ Though the Program Administrator is not a government organ, K.S.A. 12-16,139(c) defines a “municipal identification card: as being “authorized or issued by or on behalf of a

³⁰ *United States v. Hansen*, 599 U.S. 762, 771 (2023).

³¹ *Arizona v. United States*, 567 U.S. 387, 406 (2012).

³² See K.S.A. 12-345(j) (referring to a consolidated city-county as a political subdivision of the State); K.S.A. 12-364 (same); K.S.A. 12-16,139(d) (“‘Municipality’ means a city, county or any taxing subdivision of the state that employs law enforcement officers.”).

³³ Sec. 18-165(2).

city or county.” Thus, the ordinance promulgated by the Unified Government and administered by the Program Administrator falls under K.S.A. 77-207(c).

The ordinance requires law enforcement officers in the county to accept Community ID cards as proof of identity and residency,³⁴ which are vital statistics that must be maintained by local law enforcement agencies.³⁵ As we have explained in a previous Attorney General Opinion, the phrase “vital statistics” is frequently used to refer to data about births, and, at a minimum, the Unified Government and the Community ID cards collect birth dates.³⁶ Thus, the Unified Government must keep an accurate data set that conforms with K.S.A. 77-207(c) by identifying each individual by his or her biological sex at birth.³⁷ K.S.A. 77-207(c) states that the political subdivision maintaining the data set “shall identify each individual who is part of the collected data set as either male or female at birth.” Because the Community ID card is a reflection of the data set, any designation of sex on the card must accurately reflect the data set and display the cardholder’s biological sex at birth.³⁸ We interpret this to mean that subsection (c) requires the political subdivision to identify any person who appears in the data set by his or her biological sex at birth. Permitting the display of anything but a cardholder’s biological sex at birth would be a violation of K.S.A. 77-207(c)’s directive. Additionally, the Unified Government must keep and maintain an applicant’s biological sex at birth in their “data set.”³⁹

Conclusion

Providing or possessing a Community ID card does not violate K.S.A. 21-5432. Neither the ordinance nor the Community ID card implicate the crime of human smuggling. K.S.A. 77-207(c) does apply to the Community ID card, and the statute must be complied with when issuing any government-issued ID card.

³⁴ Sec. 18-165(b)(1).

³⁵ See K.S.A. 21-2501(a), (b) (requiring law enforcement agencies to maintain records of all offenses reported or known to have been committed in their jurisdiction); K.S.A. 21-2504 (giving the attorney general the authority to request these statistics).

³⁶ Att’y Gen. Op. No. 2023-2 at *3.

³⁷ See K.S.A. 77-207(a)(1) (defining sex as an “individual’s biological sex, either male or female, at birth); K.S.A. 77-207(c)

³⁸ Att’y Gen. Op. No. 2023-2 at *3 (“A driver’s license is not simply a physical card issued to a licensed driver; it is a reflection of a data set that is continually maintained and updated to ensure its accuracy.”). See also *State of Kansas, ex rel. Kris Kobach v. Harper, et. al.*, Shawnee County Case No. 23CV422, Memorandum Decision and Order on Motion for Temporary Injunction (March 11, 2024), *appeal filed*.

³⁹ K.S.A. 77-207(c).

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Ryan J. Ott

Ryan J. Ott
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