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April 10, 1933

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Mr. Joseph A. Gerk
Chief of Police
1200 Clark Avenue
St.Louis, Missouri

Dear Sir:

Your letter of April 5, 1933 addressed to this department has been referred to me for answer. You request an opinion concerning the following:

"Permit me to explain a situation with which the Metropolitan Police Department of St. Louis is frequently confronted, especially during the heat of a campaign like that we have just gone through.

I refer to demands that are made upon us for the police records of some particular candidate or candidates, or perhaps some person who is an applicant for life insurance or some one who is a witness or a principal in a litigation of some kind. These applications for records have come from various individuals, companies and organizations.

May we have an opinion from you as to just what are our rights and duties in complying with or turning down these requests for records? How about the right of the press to ask for and receive such data?

The department is not in sympathy with record-giving for campaign purposes, but wants to be sure of its ground in complying with or rejecting any such applications in future. Your courtesy in telling us how far we must go in such cases will be appreciated."

You desire to know your rights and duties relative to requests for information regarding persons that the police have records concerning. The answer to your inquiry is determined by the character of the information sought and whether it is public or purely private.

Section 7555 R. S. Mo. 1929 provides:

"The board shall cause a full journal of their proceedings to be kept, and shall also cause all their receipts and disbursements of money to be faithfully entered in books to be procured and kept for that purpose, and said journal, and all said books, and all other documents in possession of said board, shall always be open to the inspection of the general assembly of the state of Missouri or any committee appointed by it for that purpose. It shall be the duty of the board to report to the common council or municipal assembly of the said city at each annual session thereof, the number and expenses of the police force employed by it under this article, and all such other matters as may be of public interest, in connection with the duties assigned it by this article."

You will observe that it is mandatory that records of proceedings be kept and that all of said books and other documents shall always be open to the inspection of the general assembly. Also, that a report to the common council or municipal assembly shall be made concerning ; "All such other matters as may be of public interest, in connection with the duties assigned it by this Article."

Section 3794 R. S. Mo. 1929, pertains to an establishment of a Bertillon system of identification of criminals. This section provides:

****and the signalitic card and other results thereof may be published for the purpose of affording information to officers and others engaged in the execution or administration of the law."

We have examined the statutes of this State and the above are the only ones that bear on the subject of police records. We find no case in this State exactly in point concerning your inquiry. Neither do we find any decision or statute which give every person the right to examine your records.

Corpus Juris Vol. 53 at page 624, et seq, in discussing the right to inspect or use public records sets out that at common law a person had no right to inspect public records or to make copy thereof unless he had some interest therein. One had no right to make such an inspection or to make copy for the purpose to satisfy curiosity or motives merely speculative.

Ruling Case Law, Vol. 23 p. 160, et seq, has this to say:

"It is quite generally conceded that there is no common law right in all persons to inspect public documents or records; and that right, if it exists, depends entirely on the statutory grant."***"

And further:

"It has been held, however, that no one has a right to examine or obtain copies of public records from mere curiosity or for the purpose of creating public scandal.""

And further:

"The right of inspection does not extend to all public records or documents, for public policy demands that some of them, although of a public nature, must be kept secret and free from common inspection, such for example as diplomatic correspondence and letters and despatches in the detective police service or otherwise relating to the apprehension and prosecution of criminals.""

In the case of People ex rel. Stenstrom v. Harnett, 226 N Y S 338 l.c. 343, the court said:

"Secrets of State, such as diplomatic correspondence, records of the police, or communications by voluntary informers, may be withheld from inspection, even where a person directly interested is concerned." Egan v. Board of Water Supply of City of New York, 305 N.Y. 147, 41 L.R.s.(N.S) 380, 98 N.E. 467. Worthington v. Scribner, 109 Mass. 487.

There are cases that hold that a public official has to allow the county court to examine their records. These cases pro-

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ceed on the theory that the statute gives the county court such authority.

State ex rel. v. Reburn, 158 Mo.A. 173.

State ex rel. Gay v. Jones, 158 Mo.A. 170.

There are also cases that hold that a person has the right to examine a public record in regard to elections.

State ex rel. Thomas V. Hoblitzelle 85
Mo. 630.

This case held that poll books are public records and open as such for every citizen's inspection under reasonable rules and regulations as the court or officer having them in charge may impose. The court in this case compelled the inspection by mandamus.

From the above and foregoing you will note that records kept in performance of your duty under Sections 3794 and 7555 would be public records and that other records purely private although kept by you as a public officer might not be thus classed as public.

In our opinion records kept by virtue of statutory provisions, supra, are such that the public has the right to inspect, even though there are limitations as to who may inspect. However, records of a private nature or for use by the police, would not in our opinion be such as to require you to permit their inspection.

You would therefore be within your rights if you believe, in your discretion, that information should not be given concerning a person which was gathered from sources purely private and not as an official duty. And if a person desiring the information insists on obtaining same, then, he could bring a writ of mandamus and the question then could be adjudicated.

You will see therefore, the giving of information is a matter of discretion with no hard and fast rule applied. Of course, records kept under sections 3794 and 7555 would at all times be open to public inspection.

Trusting this answers your inquiry. We are

Yours very truly,

JAMES L. HORNBOSTEL
Assistant Attorney General.

APPROVED

Attorney General.

JLH:MM