

PUBLIC RECORDS:  
DIVISION OF  
INDUSTRIAL INSPECTION:

Individual statistical reports filed with  
Division of Industrial Inspection are  
public records subject to inspection by  
those parties showing an interest therein.  
Inspection reports made by Division not  
subject to inspection.

March 10, 1950

3/30/50



Honorable Lon N. Irwin  
Director  
Division of Industrial Inspection  
Department of Labor and Industrial Relations  
Jefferson City, Missouri

Dear Mr. Irwin:

This department is in receipt of your recent request for  
an official opinion. This request is as follows:

"The Division of Industrial Inspection of the  
Department of Labor and Industrial Relations  
would like an opinion on whether or not this  
Division has the right to refuse to give in-  
formation in regard to the individual statisti-  
cal reports that are made to this Division.  
Employers are required to fill out these forms  
and return them to the Industrial Inspection  
Division under penalty of Section 13185, Laws  
of 1929. We have been requested to furnish this  
information on several occasions but we have not  
given out information of this kind to any com-  
petitors in the various businesses in which they  
may be engaged.

"We have had inquires on our inspection sheets  
to tell them whether or not the condition was  
good or bad at the last inspection of the plants  
that were inspected. In court tests against the  
Workmen's Compensation information may be damaging  
to either side in the court contests and we do not  
put out this information, only through court action  
for the forms to be brought to the courts for evi-  
dence.

"As our statistical reports are received individually  
our reports are made and broken down in the various  
divisions by the counties and totaled by the state.  
We do not print any information in regard to the  
statistical report of any individual manufacturer.

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"I would appreciate very much an opinion from your office. I am enclosing copies of statistical forms and the book for the State statistical report for the Division of Industrial Inspection."

The 63rd General Assembly created and established the Department of Labor and Industrial Relations, said department to be under the control, management and supervision of the Industrial Commission of Missouri (Section 1, Laws Missouri, 1945, page 1102). There was also created a Division of Industrial Inspection of the Department of Labor and Industrial Relations, with a director thereof, which director "shall perform all duties and have all the power and responsibilities imposed and conferred upon the Commissioner of Labor and Industrial Inspection, except as otherwise provided by law" (Section 12(c), Laws Missouri, 1945, page 1106).

Section 10154, Laws Missouri, 1945, page 1100, reads:

"The Industrial Commission of Missouri, with the assistance of the director of the division of industrial inspection of the department of labor and industrial relations shall, on or before the first day of February of each year, present a report in writing to the Governor, which shall contain statistical details relating to the operation of the division under Chapter 68 of the Revised Statutes of Missouri, 1939, including such information as is contemplated by Section 10153 thereof."

Section 10153, R. S. Mo. 1939, provides:

"The object of this department shall be to collect, assort, systematize and present an annual report to the governor, to be by him transmitted biennially to the general assembly, statistical details and information relating to all departments of labor in the state, especially in its relations to the commercial, industrial, social, educational and sanitary conditions of the laboring classes and to the permanent prosperity of the productive industries of the state.

Section 10159, R. S. Mo. 1939, provides:

"It shall be the duty of every owner, operator or lesse of any factory, foundry or machine shop or other manufacturing establishment doing business within this state to report annually,

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on or before the first day of March, to the commissioner of labor and industrial inspection, the name of firm, or corporation and the number of members, male and female, constituting the same; where located; capital invested in grounds, buildings and machinery; class and value of goods manufactured; aggregate value of raw material used; total number of days in operation; amount paid yearly for rent, tax and insurance; total amount paid in wages; total number of employees, male and female; number engaged in clerical and manual labor, with detailed classification of the number and sex of employees engaged in each class, and average daily wages paid to each."

Section 10160, R. S. Mo. 1939:

"The commissioner of labor and industrial inspection is hereby authorized to furnish suitable blanks to the owner, operator, manager or lessee of any factory, workshop, elevator, foundry, machine shop or any other manufacturing establishment, to enable said owner, operator, manager or lessee to intelligently comply with the provisions of section 10159 of this article; and any such owner, operator, manager or lessee who shall neglect or refuse to comply with the provisions of this article, or who shall untruthfully answer any question or questions put to him by the commissioner, in a circular or otherwise, in furtherance of the provisions of sections 10158 and 10159 shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than two hundred dollars.

Pursuant to Section 10160, supra, a form labeled "Census of Manufacturing and Wage Schedule", (copy attached), is furnished by the Division of Industrial Inspection to such persons as are named in Section 10159, supra, with blank spaces in which such information as is required by said Section 10159 is to be written. When these completed forms are returned to the Division of Industrial Inspection, they furnish the data from which is obtained such statistical information as the Division is required to prepare. Your first question is whether or not the Division of Industrial Inspection has the right to refuse to give or allow to be obtained any information contained in any individual report made to the Division pursuant to the above statutes.

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In the case of State ex rel. v. Henderson, 169 S.W. (2d) 389, 350 Mo. 968, the Supreme Court of Missouri defined a public record at l.c. 392 as follows:

"In all instances where, by law or regulation, a document is required to be filed in a public office, it is a public record and the public has a right to inspect it. 53 Corpus Juris, Section 1, Pages 604 and 605; Clement v. Graham, 78 Vt. 290, 63 A. 146. Ann. Cas. 1913E, 1208; Robison v. Fishback, 175 Ind. 132, 93 N.E. 666, L.R.A. 1917B, 1179; Ann. Cas. 1913B, 1271; State ex rel. Eggers v. Brown, 345 Mo. 430, 134 S.W. 2d 28."

It is specifically provided by statute that the reports in question be made to the Division of Industrial Inspection. There is no statutory provision which might take them out of the operation of the rule laid down in State ex rel. v. Henderson. It must be concluded that these reports have the status of public records.

The fact that these reports constitute questionnaires from which data is obtained to prepare the statistical report provided for by Section 10153, supra, does not affect this conclusion. It was held in the case of People v. Peck, 34 N.E. 347, 138, N.Y. 386, 20 L.R.A. 381, in which the commissioner of statistics of labor was criminally tried for the destruction of reports similar in nature to those here under consideration, that though a public officer has prepared a report based on questionnaires filed in this office, the questionnaires do not thereby lose their character as public documents.

Now that it has been concluded that these reports constitute public records, there remains the question of whether or not they are subject to inspection, and by whom. At the top of these blank forms we find the following:

"NOTICE: The information requested in this report has nothing to do with your income tax or sales tax, and is handled as confidential information by this Division for statistical purposes only."

We feel that this "Notice" is of no legal effect whatsoever. Either the forms provided for and filed pursuant to the above statutes, by their very nature, constitute public records subject to inspection, or they do not. If they are such as are subject to inspection, this "Notice," whether provided for by a rule, regulation or mere stipulation of the Division, would be of no avail as the Division would be without authority to change the legal nature of these forms unless specifically authorized by statute to do so. And there is no statute

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authorizing such rule or regulation. We quote from the case of *People v. Peck*, supra, at l.c. 351:

"\* \* \*If these papers contained material and pertinent information collected under the act, and for the purposes contemplated by the act, then the indictment could not be defended on the ground that the papers were the private papers of the persons sending them to the commissioner, or that the information thus communicated was confidentially disclosed. The statute makes it the duty of the commissioner to procure the information, and makes it the duty of the persons designated to give it, and when the information is given it becomes public, and is for a public purpose, and no stipulation or promise on the part of the commissioner can give it any other character."

There is no statutory authority regarding the question of who may inspect the public records of the Division of Industrial Inspection. Under Section 645, R. S. Mo. 1939, the common law remains in force in the State of Missouri unless repugnant to the Constitution of the United States, or the Constitution or legislative acts of this State. We find the common law rule relative to who may inspect public records stated in 45 Am. Jur., Records and Recording Laws, paragraph 17, page 427, as follows :

"There is authority to the effect that according to the English common law there is no right in all persons to inspect public documents or records. It is, however, to be noted that the English courts have seldom been called upon to enforce a private individual's right to inspect public documents and records except where the inspection was desired to secure evidence in a pending or prospective suit. Accordingly, there was formulated the following common-law doctrine: Every person is entitled to the inspection, either personally or by his agent, of public records, including legislative, executive, and judicial records, provided he has an interest therein which is such as would enable him to maintain or defend an action for which the document or record sought can furnish evidence or necessary information. This rule, it is said, is not so much a denial of the right of every citizen to inspect the public records and documents as a declaration of the interest which a private individual must have to avail himself of

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the extraordinary writ of mandamus to enforce his right. In theory the right is absolute, yet in practice it is so limited by the remedy necessary for its enforcement that it can be denominated only a 'qualified right.' The existence of a suit is not, however, a sine qua non for the exercise of the right."

We therefore see that the common law right to inspect public records is not an unqualified right, but that it is limited to those individuals who may maintain mandamus to enforce the right. As to who may invoke mandamus, we quote from the case of *Clement v. Graham*, 63 A. 146, 78 Vt. 290, (cited in *State ex rel. v. Henderson*, supra), where the court at l.c. 155 stated:

"\* \* \*We think the true rule, however, is that stated by Mr. High in his work above cited, Sec. 431. He says: 'A distinction is taken between the cases where the extraordinary aid of a mandamus is invoked merely for the purpose of enforcing or protecting a private right, unconnected with the public interest, and cases where the purpose of the application is the enforcement of a purely public right, where the people at large are the real party in interest. And, while the authorities are somewhat conflicting, yet the decided weight of authority supports the proposition that, where the relief is sought merely for the protection of private rights, the relator must show some personal or special interest in the subject-matter, since he is regarded as the real party in interest, and his right must clearly appear. Upon the other hand, when the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the people are regarded as the real party in interest, and the relator at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, it being sufficient to show that he is a citizen and as such interested in the execution of the laws.'"

It is certainly not the enforcement of a common or public right which prompts competitors of individuals filing forms with the Division of Industrial Inspection to inspect such forms. They would be precluded from inspecting such records as citizens and taxpayers interested in the enforcement of a public right. Nor do we feel that a competitor has such a tangible and direct interest in these

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records as would permit inspection. It is merely idle curiosity that competitors of the individuals filing these forms wish to satisfy when they seek to inspect these records. And we do not deem them to have for this reason sufficient interest in these records as would justify their access to inspection of same. It is therefore our opinion that the records filed with the Division of Industrial Inspection pursuant to Section 10159 are public records subject to inspection by individuals having an interest in same. However, competitors of parties who have filed such reports who merely wish to inspect same out of idle curiosity do not possess such an interest. They do not have the clear legal right which would permit invoking mandamus to enforce same.

The other question presented in your opinion request is whether or not information regarding the condition of plants inspected by the Division should be divulged upon request for same.

Section 10179, R. S. Mo. 1939, reads in part:

"\* \* \*It shall be the duty of the commissioner, his assistants or deputy inspectors, to make not less than two inspections during each year of all factories, warehouses, office buildings, freight depots, machine shops, garages, laundries, tenement workshops, bake shops, restaurants, bowling alleys, pool halls, theaters, concert halls, moving picture houses, or places of public amusement, and all other manufacturing, mechanical and mercantile establishments and workshops. The last inspection shall be completed on or before the first day of October of each year, and the commissioner shall enforce all laws relating to the inspection of the establishments enumerated heretofore in this section, and prosecute all persons for violating the same. \* \* \*"

(Underscoring ours.)

Section 10174, Laws Missouri, 1947, Volume I, page 356, and Sections 10222, 10233, 10251 and 10259, R. S. Mo. 1939, confers upon the Commissioner of Labor and Industrial Inspection the duty of making the inspections provided for by the various articles of Chapter 68 relating to inspection and health and safety of employees and also provides them with the authority to prosecute for violations of the provisions thereof. Violations of these provisions are made misdemeanors by the statutes and penalties provided therefor. These powers and duties now rest in the Division of Industrial

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Inspection and the director of said division. Pursuant to these statutes inspections are made and inspection sheets filled out with the results of the inspections. Assuming such reports to be public records, we feel that they are not subject to inspection.

The division in enforcing the inspection laws of the state acts as a law-enforcing agency. Its inspection records, though they may be of a public nature, are the result of inspections made for the purpose of ascertaining violations of law and the subsequent prosecution of such offenses. Such records have been held to be secret and not subject to inspection; *Lee v. Beach Pub. Co.*, 173 So. 440, 127 Fla. 600; *Re Egan*, 98 N.E. 467, 205 N. Y. 147, *Ruryon v. Board of Prison Terms and Paroles*, 79 P. (2d) 101, 26 Cal. App. (2d) 183. In *Lee v. Beach Pub. Co.*, supra, there was a city ordinance providing that all records of the city be open for inspection, yet the court held at l.c. 442, that:

"The appellant contends that there are certain records in the police department of a city which must be kept secret and free from common inspection as a matter of public policy. This is true. The rule as stated in 23 R.C.L. 161, is as follows:

"The right to inspection does not extend to all public records and 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 dispatches in the detective police service or otherwise relating to the apprehension and prosecution of criminals."

It is therefore our conclusion that since the inspection records are made in the enforcement of the inspection laws and since they are instrumental in the prosecution of violators of such laws, they fall within that class of records which the case of *Lee v. Beach Pub. Co.* holds that public policy demands that they be kept free from common inspection.

#### CONCLUSION

It is therefore the opinion of this department that the individual statistical reports filed with the Division of Industrial Inspection pursuant to Section 10159, R. S. Mo. 1939, are public records subject to inspection by those persons having an interest therein. However, competitors of those individuals filing such

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forms who wish to inspect these records merely out of idle curiosity do not possess such an interest as will permit inspection.

It is further the opinion of this department that the inspection reports made by the Division of Industrial Inspection are of that class of records that public policy demands be kept free from inspection.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR  
Attorney General



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