

STATE PURCHASING AGENT:  
PUBLIC RECORDS:

State Purchasing Agent may not sell the  
right to inspect and copy public records.

March 17, 1953



Honorable Edgar C. Nelson  
State Purchasing Agent  
Division of Procurement  
State Capitol Building  
Jefferson City, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this office including a letter directed to your office and a contract the nature of which we will hereinafter discuss.

You inquire whether the matter called up by these documents relate to the duties of your office.

The contract as drawn and submitted with your request, if executed, purportedly would bind the State of Missouri by and through the Director of Revenue and certain private companies who wish to obtain registration information from the records of the motor vehicle division. The contract provides that the company shall pay to the State of Missouri \_\_\_\_\_¢ per name of persons obtained from the records. A further provision of the contract binds the company to pay to the state \$50.00 per month for each employee furnished by the company in the extraction of records of registration from the department. These provisions are as follows:

"That the Company pay to the Director of Revenue of The State of Missouri the sum of Fifty (\$50.00) Dollars per month for each employee required or furnished by the Company in the extraction of records of registration from the Department.

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"There shall be a fee paid of \_\_\_\_\_¢  
per name of persons obtained from the  
records."

We note also the following provision found in the contract:

"Provided further that it is agreed that  
the charges, fees and requirements herein  
set forth are for the purpose of indemni-  
fying the Revenue Department for the in-  
conveniences caused."

There are other provisions relating to allocation of space,  
furnishing equipment, termination of the contract, etc., which we  
do not deem pertinent to this inquiry.

It appears that this matter was referred to your office for  
the purpose of selling the privilege of allowing companies to  
secure this information under the terms of the contract.

The law relating to the division of procurement is found in  
Chapter 34, RSMo 1949. In regard to the duties of the State  
Purchasing Agent to make sales, we direct your attention to Section  
34.140, which provides in part as follows:

"\* \* \*He shall also have power, subject  
to the same provisions as for bids for  
purchases, to sell any surplus or unneeded  
supplies or property, in his hands or owned  
by the state or any department thereof. \* \* \*"

Even assuming that the sale of the right to copy records  
would fall within the unlimited definition of the terms supplies  
or property, a question which admits of grave doubt, we do not  
believe that such can lawfully be done.

Section 301.350, Missouri Revised Statutes, Cumulative Supple-  
ment 1951, relating to the books and records of the motor vehicle  
division provides as follows:

"1. Upon receipt of an application for  
registration of a motor vehicle, trailer,  
chauffeur, registered operator, manufac-  
turer or dealer, as provided in sections  
301.010 to 301.440, the director of rev-  
enue shall file such application and  
register such motor vehicle, trailer,  
chauffeur, registered operator, manufac-  
turer or dealer, together with the facts

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stated in the application in a book to be kept for that purpose, under a distinctive number assigned to such motor vehicle, trailer, chauffeur, registered operator, manufacturer or dealer. Separate books shall be kept as follows:

- (1) Motor vehicles registered by owners, except commercial motor vehicles;
- (2) Commercial motor vehicles;
- (3) Trailers;
- (4) Motorcycles and motor tricycles;
- (5) Manufacturers and dealers;
- (6) Chauffeurs;
- (7) Registered operators;
- (8) Official motor vehicles.

"2. The director of revenue shall also keep an index, by cards or otherwise, according to motor number or other manufacturer's identification numbers, of vehicles registered and also by manufacturer's names.

"3. The director of revenue may keep such other classification and records as he may deem necessary.

"4. All of such books and records shall be kept open to public inspection during reasonable business hours.

"5. The governor may cause the books and accounts of the commissioner to be audited by the state auditor; or otherwise, at any time."

(Underscoring ours.)

You will note that this section provides that all such books and records shall be open to public inspection during reasonable business hours. Speaking of a provision substantially the same as the one above noted, the Supreme Court, in the case of State v. Brown,

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134 S. W. (2d) 28, l. c. 31, said:

"\* \* \*If so, such records are 'official' records or public records because the statute requires them to be kept open to public inspection."

It is fundamental law that persons interested in public records have the right to inspect the same which right also includes the right to make copies and memoranda thereof. No fee can be charged for the exercise of this right of inspection unless expressly provided by statute. We find no such provision. This rule is stated in 76 C.J.S., Records, page 146, as follows:

"In the absence of a statute, authorizing the recording officer to charge fees for inspection of records in his office or requiring payment of such fees, persons entitled to inspection of such records may inspect them, and may make memoranda or copies thereof without paying a fee for the privilege, \* \* \*."

Whether the contract could be construed as a lease of space for the purpose of copying the records and the fees and charges noted from the provisions of the contract, supra, consideration, therefore, we do not undertake to determine, since such would not involve the duties of the State Purchasing Agent.

#### CONCLUSION

Therefore it is the opinion of this office that the State Purchasing Agent has no authority to contract for sale or sell the right or privilege of allowing private individuals to secure registration information from the records of the motor vehicle division since such records are public records open to inspection and for which no fee may be charged for the right thereof.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. D. D. Guffey.

Very truly yours,

JOHN M. DALTON  
Attorney General

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