

PUBLIC RECORDS: Notice of proposed change in contract required to be  
OFFICERS: filed under Section 295.100, RSMo 1949, is a public  
record and subject to inspection by the members of  
the public.

May 26, 1953



Mr. Daniel C. Rogers  
Chairman  
Missouri State Board of Mediation  
Jefferson City, Missouri

Dear Mr. Rogers:

This will acknowledge receipt of your request for an opinion  
which reads in part:

"Section 295.100 of the King-Thompson Act pro-  
vides that the parties to a labor contract in  
public utilities shall give each other

' . . . . at least a 60 day notice of desired  
changes . . . . '

in the existing contract and it further provides  
that the parties shall

' . . . . file a copy of such desired changes  
with the State Board of Mediation at least  
60 days before the date fixed for the ter-  
mination of said contract, agreement or  
understanding. '

"The question arises whether the above notices  
of desired changes filed in the office of the  
State Board of Mediation are open to public  
perusal."

Section 295.100, RSMo 1949, reads:

"1. In the case of all existing labor contracts,  
agreements or understandings which do not pro-  
vide for at least a sixty-day notice of desired  
changes and which contracts, agreements or under-  
standings terminate after seventy days following  
the effective date of this chapter, the parties

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thereto shall nevertheless inform, in writing, the other party or parties of any specific changes desired to be made in said contract, agreement or understanding and file a copy of such desired changes with the state board of mediation at least sixty days before the date fixed for the termination of said contract, agreement or understanding.

"2. In the case of labor contract, agreements or understandings terminating within seventy days after this chapter shall become effective, the parties thereto shall forthwith, or not later than ten days after the effective date of this chapter, inform the other party, in writing, of the specific changes desired to be made in said contract, agreement or understanding and promptly file a copy of such demands with the state board of mediation."

Under the foregoing statute it clearly requires the notice and copy of desired changes in said contract provided for therein to be filed with the State Board of Mediation and specifies the particular time for such filing. We are cognizant of the fact that in all probability the legislative intent in enacting said statute was to merely apprise said board of the particular change desired in said agreement, understanding or contract so that said board might proceed with conferences between the contracting parties in an effort to negotiate some amicable settlement between said parties and thereby avoid strikes and the discontinuance of the public services to the public.

There is considerable authority holding that such a filing, as required in said statute, does not constitute a public record and, therefore, not open to general inspection by members of the public. See Vol. 53, C.J., pp. 626, 627, Vol. 76, C.J.S., Sec. 36, p. 137, and *People ex rel. Stenstrom v. Harnett*, 226 N.Y.S. 338, l.c. 341, 342. The latter decision clearly classifies such a notice as required to be filed herein with the Board of Mediation as not being a public document and, therefore, not open to public inspection.

However, in rendering this opinion we are confronted with two decisions of our Supreme Court which clearly hold contrary to the above. The first is *State ex rel. Eggers vs. Brown*, 134 SW (2d) 28, 345 Mo 430, wherein the court held that certain records required to be kept by statute in the branch office of the commissioner of motor vehicles in the State of Missouri

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were public records and open to public inspection. However, in that case the statute under consideration specifically required such records to be open for public inspection. In so holding, l.c. 30, 31, the court said:

"Section 7772, Revised Statutes Missouri 1929, Mo. St. Ann. § 7772, p. 5192, provides 'upon receipt of an application for registration of a motor vehicle \* \* \* the commissioner shall file such application and register such motor vehicle \* \* \* in a book to be kept for that purpose, under a distinctive number assigned to such motor vehicle.' Then the section sets out certain specific records required to be kept and provides: '(c) the commissioner may keep such other classifications and records as he may deem necessary. (d) all such books and records shall be kept open to public inspection during reasonable business hours.'

"Since Section 7760 authorizes the branch office to receive applications and deliver certificates and number plates, and Section 7772 requires applications to be filed and registered as received, we think the statutes contemplate that records shall be kept in the branch offices as well as in the main office. If so, such records are 'official' records or public records because the statute requires them to be kept open to public inspection.

"True, the statute does not specifically refer to 'ditto lists,' but it does include 'such other \* \* \* records as (the commissioner) may deem necessary' and the commissioner has seen fit to keep such lists in the branch office and to keep them for the very purpose of giving information to the public. Therefore, we hold such lists to be public or official records."

There is another decision which we feel must be followed since it is the latest ruling of the Supreme Court of this state and that is State vs. Henderson, 169 SW (2d) 389, l.c. 392. In that case the supervisor of liquor control of the State of Missouri had adopted a regulation conforming to the statutory provision requiring liquor dealers to submit certain copies of invoices to the supervisor of liquor control, State of Missouri. Mandamus proceedings were instituted in the

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Circuit Court of Cole County, Missouri to force the supervisor of liquor control to permit inspections of such records and allow them to be copied and sold by the parties desiring to inspect and copy said invoices. The court in ruling made no exceptions and said:

"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; Robinson 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."

So it appears to be that the law is fairly well settled in this state that the surest method of preventing public inspection of any public document filed with a public officer is to so provide by statute.

#### CONCLUSION.

Therefore, it is the opinion of this department, in view of the decision of State vs. Henderson, supra, that said notice of proposed change in agreement, contract or understanding required to be filed with the State Board of Mediation under Section 295.100, RSMo 1949, is a public record and subject to inspection by the members of the general public.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

JOHN M. DALTON  
Attorney General

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