

Opinion No. 225.

**Corporations—Corporation Licenses—
Tax Returns—Photostatic Copies—
Certified Copies—State Board of
Equalization—Public Records Defined
—Public Writings Defined—Governor.**

HELD: Corporation license tax returns are and remain private writings until the Governor shall make a blanket order to the effect that they are public records. In the absence thereof a private individual is not entitled to inspect, to take photostatic copies of, or to receive certified copies of any one corporation's license tax return.

January 9, 1936.

Hon. Elmer Holt
Governor of Montana
The Capitol

You have asked us to define your powers in the matter of allowing one Joe L. Clark to make photostatic copies or, in lieu thereof, to obtain certified copies of the corporation license tax returns of the Castile Land Company for the years 1924 to 1934, inclusive.

If these returns be public records or public writings then Sections 455, 10542 and 10543, Revised Codes 1921, are applicable. (*Whalen v. Superior Court*, 46 Pac. 468; *Harrison v. Powers*, 127 Pac. 818; *Coldwell v. Board of Public Works*, 202 Pac. 879; *Findley v. Industrial Accident Commission*, 241 Pac. 912; *State v. Grace*, 5 Pac. (2d) 301; *Fox West Coast Theatre v. Industrial Commission*, 7 Pac. (2d) 582; *State v. Keller*, 21 Pac. (2d) 807.) These sections read as follows:

"Section 455. The public records and other matters in the office of any officer are at all times, during office hours, open to the inspection of any person. In cases of attachment, the clerk of the court with whom the complaint is filed must not make public the fact of the filing of the complaint, or the issuing of

such attachment, until after the filing of return of service of attachment.

"Section 10542. Every citizen has a right to inspect and take a copy of any public writings of this state, except as otherwise expressly provided by statute.

"Section 10543. Every public officer having the custody of a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing."

But are the returns in question public records or public writings as defined by law? "Public records" and "public writings" mean the same thing. They are interchangeable terms and convey the same idea. (*Steiner v. McMillan*, 59 Mont. 30; *Evans v. District Court*, 293 Pac. 323; 53 C. J. 604.) Public writings are the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country, and are also public records, kept in this state, of private writings. (Sec. 10540, R. C. M. 1921.) They are divided into four classes: (1) laws; (2) judicial records; (3) other official documents, and (4) public records, kept in this state, of private writings. (Sec. 10544, R. C. M. 1921.) Section 2299, Revised Codes 1921, as amended by Section 1 of Chapter 146, Laws of 1923, requires every corporation subject to the corporation license tax to file with the State Board of Equalization a sworn return of its net annual income. Section 2300, as amended by Section 2 of Chapter 146, Laws of 1923, then requires the board to examine each return and to assess the amount of the tax due from each corporation. Section 2302, as amended by Section 3 of Chapter 146, Laws of 1923, provides: "When the assessment shall be made as provided in this act, the returns, together with any corrections thereof which may have been made by the State Board of Equalization, shall be filed in the

office of said board, and shall constitute public records and be open to inspection as such only upon the order of the Governor, and under the rules and regulations to be prescribed by the State Board of Equalization." Unless and until the governor, therefore, makes a blanket order to the effect that these corporate returns are public records they remain in effect private writings. (Section 10539, R. C. M. 1921; *Whelan v. Superior Court*, supra.)

As the returns of the Castile Land Company are now private documents in the custody of the State Board of Equalization, Clark is not entitled to inspect them or to have photostatic copies made of them, or to receive certified copies of them from the proper officer. (*Whelan v. Superior Court*, supra; *Findley v. Industrial Accident Commission*, supra; *Bend Pub. Co. v. Haner*, 244 Pac. 868; *Round v. O'Meara*, 83 N. E. 412.)