

No. 96

RECORDS—LIQUOR CONTROL BOARD—PUBLIC INSPECTION OF RECORDS

Held: A person may inspect records of Liquor Control Board for the purpose of securing information which he sells for profit, subject to reasonable regulations governing the right to inspect.

April 25, 1941.

Mr. Ray L. Wahl, Administrator
State Liquor Control Board
Helena, Montana

Dear Mr. Wahl:

You request my opinion as to the right of a person to inspect and copy information from the records of the State Liquor Control Board and sell such data for his own profit. You state that, in the past, such activity has caused a considerable amount of confusion in your office.

Section 455 of the Revised Codes Montana, 1935, the statute most comprehensive in scope allowing the right of inspection, provides:

"Section 455. Records Open to Public Inspection—Exceptions.

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

It is unimportant to determine whether or not the records in your office—from which the data is procured—are "public records," as they fall within the scope of the phrase "other matters," used in the foregoing section, as interpreted in *State ex rel. Holloran v. McGrath*, 104 Mont. 490, 67 Pac. (2nd) 838.

It should be pointed out, however, that—in a certain class of cases—records and communications should be kept confidential. These principles are well set out in the case of *Runyon v. Board of Prison Terms and Paroles* (Cal.), 79 Pac. (2nd) 101, construing a statute identical to ours:

"... although it has been held that the use therein of the words 'other matters' operates to extend, in a certain class of cases, the right of access to documents which are not required by law to be filed as public records, but which relate to matters essential to the general welfare of taxpayers, such for example as matters of taxation, revenue, and the proceedings for the carrying out of governmental projects at public expense (*Coldwell v. Board of Public Works*, 187 Cal. 510, 202 P. 879; 23 R. C. L. pp. 160, 161), the courts have consistently declared that in another class of cases public policy demands that certain communications and documents shall be treated as confidential and therefore are not open to indiscriminate inspection, notwithstanding that they are in the custody of a public officer or board and are of a public nature (23 R. C. L. pp. 160-163). In-

cluded in this class are documents and records kept on file in public institutions, concerning the condition, care and treatment of the inmates thereof, and the files in the offices of those charged with the execution of the laws relating to the apprehension, prosecution, and punishment of criminals. 23 R. C. L., p. 161."

It does not appear from your inquiry that your records and books are, by reasons of public policy, of a confidential nature.

The right of inspection is not an unlimited right. It is subject to such reasonable regulations as you may impose to prevent undue interference with the orderly conduct of your office.

State ex rel. Holloran v. McGrath, 104 Mont. 490, 67 Pac. (2nd) 838;

State ex rel. Spencer v. Freedy, 198 Wis. 388, 223 N. W. 861.

The regulation must be reasonable and not of such arbitrary nature as in effect to deny to the applicant the right granted him by law. (State ex rel. Holloran v. McGrath, supra.)

The right of inspection is not limited to persons having immediate interest in any particular entries and may be exercised in order to carry on the business of selling for profit the information contained in them.

Direct Mail Service v. Registrar of Motor Vehicles (Mass.), 5 N. E. (2nd) 545;

Nowack v. Fuller, 243 Mich. 200, 219 N. W. 749.

I conclude, therefore, that—in the absence of reasons of public policy—the right to inspect these entries and records exists and may be exercised subject to any reasonable regulations you see fit to impose. If considerable confusion is now caused in your office by such inspections, you will undoubtedly be able to impose restrictions on the use of your records so as to eliminate this confusion to a large extent.

Sincerely yours,

JOHN W. BONNER
Attorney General