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1. RECORD—INSPECTION—NO STATUTORY PROVISION TO PROHIBIT THE GENERAL PUBLIC FROM INSPECTING RECORD OF TAX COLLECTIONS OR GENERAL TAX DUPLICATE OF TANGIBLE PERSONAL PROPERTY OF COUNTY TREASURER—SAID RECORDS MAY BE INSPECTED AT ALL REASONABLE TIMES—LIMITATION—INSPECTION DOES NOT ENDANGER SAFETY OF RECORDS OR UNREASONABLY INTERFERE WITH DISCHARGE OF DUTIES OF TREASURER'S OFFICE.
2. CLASSIFIED DUPLICATE OF COUNTY TREASURER NOT OPEN TO PUBLIC INSPECTION—SPECIFIC PROHIBITION—SECTION 2587-1 G. C.

SYLLABUS:

1. There is no statutory provision prohibiting a member of the general public from inspecting the record of tax collections or the general tax duplicate of tangible personal property of the county treasurer; therefore, said records may be inspected at all reasonable times, subject only to the limitation that such inspection does not endanger the safety of the records or unreasonably interfere with the discharge of the duties of the treasurer's office.

2. The classified tax duplicate of the county treasurer is not open to public inspection due to the specific prohibition of such inspection contained in Section 2587-1, General Code.

Columbus, Ohio, January 9, 1946

Hon. V. F. Rowland, Prosecuting Attorney
Cadiz, Ohio

Dear Sir:

I am in receipt of your letter which reads as follows:

"I desire your opinion on the following matter.

In view of General Code, Section 5372-3, Section 5376, Section 5377 and Section 12924-8 or under any other sections of the Laws of Ohio, is the county treasurer authorized or permitted to open for public inspection, by private individuals, his personal tax books which are known as:

First, County Treasurer's Record of Tax Collections, Form 7, Personal.

Second, the record known as Treasurer's Classified Tax Duplicate.

Third, Treasurer's General Tax Duplicate of Tangible Personal Property.

The above records referred to being records which contain the personal property tax assessment which has been computed by the county auditor's office and the tax commission and transmitted to the county treasurer's office for the purpose of collecting the tax assessed."

The sections to which you refer in your letter in each instance relate to personal property tax returns, which contain a listing of all such property owned by a taxpayer on tax listing day, whether tangible or intangible, together with a listing of such other property as is required to be listed on an average basis such as merchandise inventories, grain handled, etc.

Section 5372-3, General Code, provides that all personal property returns shall be transmitted to the Department of Taxation for assessment, except returns showing an income yield of less than five hundred dollars or a value of less than five thousand dollars, may be made to the county auditor who acts as a deputy of the Department of Taxation in making the assessment. It will be noted that in either event the returns are not open to public inspection.

Section 5376, General Code, makes the Tax Commissioner the assessing authority as to all returns required to be transmitted to him, and gives him the additional authority of assessing property that should have been listed for taxation, in the event such property is not listed by the taxpayer. This section further provides:

"Neither such certificate issued by the commission nor the action of the commission with respect thereto shall be required to be entered on the record of the proceedings of the commission, nor shall either be open to public inspection."

Section 5377, General Code, provides that the Tax Commissioner shall transmit to the county auditor the assessment certificates made by the Commissioner and which pertain to that county, and that the county

auditor shall transmit to the Commissioner copies of all assessment certificates made by such auditor. There are certain other provisions of this section which are not relevant here, and the section concludes with the following statement:

“The assessment certificates and copies thereof, mentioned in this section, shall not be open to public inspection.”

Section 5395, General Code, gives to the Tax Commissioner the power to make final assessments of taxable property, and requires him to transmit such assessment certificates to the county auditor or the Auditor of State, as the case may require, and further provides that these assessment certificates and the copies thereof shall not be open to public inspection.

Sections 12924-7 and 12924-8, General Code, are the penalty sections and provide that any county auditor or member of a county board of revision or member, agent or employe of the Department of Taxation who unlawfully discloses any information obtained in his official capacity shall be fined not less than fifty dollars nor more than one thousand dollars and shall be disqualified from acting in any official capacity in tax matters.

You will note that the sections cited above provide restrictions against disclosure of either the personal property returns or the assessments based thereon, by either the Department of Taxation, the Auditor of State, or the county auditors. Nowhere in any of these sections or in any other sections of law that I have examined is there to be found any restraints against either the county auditors or the county treasurers prohibiting them from permitting an examination by the public generally of the County Treasurer's Record of Personal Tax Collections or of the Treasurer's *General* Tax Duplicate of Tangible Personal Property. However, with respect to the Treasurer's *Classified* Tax Duplicate, Section 2587-1, General Code, provides:

“On or before the first Monday of August annually, the county auditor shall compile and make up, in tabular form and alphabetical order, a list of the names of the several persons, companies, firms, partnerships, associations and corporations in whose names any taxable property of the kinds enumerated in Section 5638 of the General Code has been listed and assessed in

each city and village and elsewhere in his county, as shown by the preliminary and final assessment certificates in his hands, issued pursuant to this chapter, placing separately in appropriate columns opposite each name the amount of the assessment of each kind of such property, separately taxed, the rate of taxation and the amount of tax upon each, and the total tax payable by each such person, company, firm, partnership, association or corporation, crediting such amount with the amount of the advance payment thereof, if any, in the manner provided by law. Such lists shall be prepared in duplicate. On or before the third Monday of August in each year the county auditor shall correct such lists in accordance with the additions and deductions ordered by the tax commission of Ohio and shall certify and deliver one copy thereof to the county treasurer. The copies prepared by the county auditor shall constitute the auditor's classified tax list and treasurer's classified tax duplicate of taxable property for the current year. *Such tax list and duplicate shall not be open to public inspection, but may be inspected by the tax commission of Ohio or any of its duly authorized officers, agents or employes or pursuant to the order of a court.*" (Emphasis added.)

While statutes do sometimes provide that certain records are not open to public inspection, it is also frequently provided that public records are at all times during reasonable hours open to inspection by any citizen. Even in the absence of statute it is asserted in some cases that there is no question as to the common-law right of the citizens at large to inspect public documents and records. The English common-law rule that an inspection of public documents could be had by a private person only where he showed some legal interest to be subserved by the desired inspection has been largely abrogated in this country. *Nowack v. Auditor General*, 243 Mich., 200, 219 N. W., 749, 60 A. L. R., 1351; *State, ex rel. Ferry, v. Williams*, 41 N. J. L., 332, 32 Am. Rep., 219. That common interest which every citizen has in the enforcement of the laws of the state wherein he dwells has been held to entitle a citizen to the right to inspect the public records in order to ascertain whether the provisions of the law have been observed. *Re Caswell*, 18 R. I., 835, 29 Atl., 259, 27 L. R. A., 82, 49 Am. St. Rep., 814; *Clement v. Graham*, 78 Vt., 290, 63 Atl., 146; Ann. Cas. 1913E-1208.

In the *Nowack v. Fuller* case, *supra*, a newspaper publisher, citizen and taxpayer was refused permission by the Auditor General to inspect records in his office showing how a certain appropriation was spent. In this case, the court said at page 1353 of 60 A. L. R.:

“In the absence of any statutory grant of inspection, the question in issue must be determined by a consideration of the general common-law principles relative to the right of citizens to inspect public documents and records. If there be any rule of the English common law that denies the public the right of access to public records, it is repugnant to the spirit of our democratic institutions. Ours is a government of the people. Every citizen rules. In Michigan the people elect by popular vote an auditor general. They prescribe his duties and pay his salary. He is required to keep a true account of the expenditure of all public moneys, and is answerable to the people for the faithful discharge of his duties. He is their servant. His official books and records are theirs. Undoubtedly it would be a great surprise to the citizens and taxpayers of Michigan to learn that the law denied them access to their own books, for the purpose of seeing how their money was being expended and how their business was being conducted. There is no such law and never was either in this country or in England. Mr. Justice Morse was right in saying: ‘I do not think that any common law ever obtained in this free government that would deny to the people thereof the right of free access to, and public inspection of, public records.’ *Burton v. Tuite*, 78 Mich. 374, 7 L.R.A. 73, 44 N. W. 285.

There is no question as to the common-law right of the people at large to inspect public documents and records. The right is based on the interest which citizens necessarily have in the matter to which the records relate.”

The Ohio cases touching the question here involved are *Wells v. Lewis, Auditor*, 12 O. D. (N. P.), 170; *Krackenberger v. Wilson, Mayor*, 3 O. N. P. (N. S.), 179, 15 O. D. (N. P.), 779; and *State, ex rel., v. Ditty, et al., Tax Commission*, 12 O. N. P. (N. S.), 319, 23 O. D. (N. S.), 31. Each of these cases cites with approval and follows the *Nowack* case, *supra*.

Specifically, with respect to tax records, there seems to be some question as to the right at common law of all persons to inspect and take copies of the assessments and tax records of a government or political subdivision. It would seem, however, that in general all citizens and taxpayers desirous of protecting the public interests have a right to inspect the tax records. 38 A. L. R., 1374; 60 A. L. R., 1371.

In 35 O. Jur., beginning at page 44, I find the following statement :

“There seems to be some doubt as to what the right of inspection was in England in the early days of the common law; and

the decisions are somewhat conflicting and therefore not satisfactory. However, it may be assumed that under the common-law rule the right to inspect public records was confined to those who had an interest in the subject-matter thereof. This, however, is not a general rule, and has not only been denied as obtaining in this country, but its application has been limited. It pretty generally is held that subject to proper regulations and restrictions the public records are open to the inspection of any and all persons who choose to examine them, regardless of whether or not they have any definite interest in the subject-matter thereof.

The rule in Ohio is that public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people; therefore anyone may inspect such records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same."

What constitutes a public record or document to which the right of public inspection extends is not easy of definition. However, I do not believe it can be successfully disputed that all of the records of the office of either the county auditor or the county treasurer relating to the valuation of property and the taxes thereon are public records, except to the extent that they have been withdrawn from such public inspection by the statutes referred to above. The General Code provides the method and manner in which the tax duplicate is made (Section 2583, et seq., General Code). It also provides the manner in which the county treasurer shall enter the payment of taxes on the auditor's books (Section 2594, General Code). Under this delegation of authority there devolves upon the treasurer the obligation of determining if and when the taxes are paid, and thereupon make an entry to that effect. This is a public record, probably because it is kept as an incident of the necessary duties of the office, but certainly because of the mandatory provision of the statute.

The case of *Wells v. Lewis*, supra, involved the right of a taxpayer and resident of Cincinnati to examine the real estate tax duplicate of Hamilton County, which right of examination had been refused by the defendant County Auditor Lewis. The first four branches of the syllabus in that case read as follows:

1. All the records in the office of the county auditor relating to the valuation of property and the taxes on the same are public records.

2. The right to inspect public records is not confined to persons having a private interest to be subserved by such inspection; and the inspection is not limited to such records and such parts of them as affect such interest.

3. Public records are the people's records. The officials in whose custody they happen to be are mere trustees for the people, any one of whom may inspect such records at any time, subject only to the limitations that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same.

4. The right to inspect public records is a property not political right, and will be enforced by courts of equity in a case calling for the exercise of the powers of such courts."

Therefore, in view of the foregoing and in the absence of any express enactment restricting the right of inspection, or any restriction that could be fairly implied from the acts of the legislature, it is my opinion that the Treasurer's Record of Personal Tax Collections and his General Tax Duplicate of Tangible Personal Property are open to inspection at any time, subject only to the limitation that such inspection does not endanger the safety of the record or unreasonably interfere with the discharge of the duties of his office.

With respect to the Treasurer's Classified Tax Duplicate, this, of course, is not open to public inspection in view of the specific prohibition in Section 2587-1, General Code.

Respectfully,

HUGH S. JENKINS

Attorney General