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FIRE MARSHALL, STATE—REPORTS AND COMMUNICATIONS—PREPARED BY INVESTIGATORS—NOT “RECORDS” WITHIN MEANING OF SECTION 3737.22 RC.—NOT “OPEN TO PUBLIC INSPECTION”—SECTIONS 3737.09, 3737.22 RC.

**SYLLABUS:**

Reports and communications prepared by investigators within the division of state fire marshal, pursuant to an investigation conducted in accordance with the provisions of Sections 3737.09 through 3737.13, Revised Code, are not “records” within the meaning of Section 3737.22, Revised Code, and are therefore not “open to public inspection” within the meaning of that section.

Columbus, Ohio, April 13, 1956

Hon. Charles R. Scott, State Fire Marshal  
Columbus, Ohio

Dear Sir :

I have before me your request for my opinion which reads as follows :

“Many times I have been called upon to show the results of investigations to the public under the provisions of the above quoted section (3737.22, Revised Code). This office is required by statute to keep a record of fires by the section above quoted. Further, we are charged by Sections 3737.08-13 with investigating all fires of a suspicious nature and with furnishing the necessary facts to the prosecuting attorney and assisting in the presentation of those facts in the proper courts. So that you may fully understand my question, I am submitting our forms No. 13 and No. 27 upon which the fire chiefs of the state report fire losses to our office, and I am also enclosing for your consideration the materials which would make up an investigation report of an individual charged with arson or kindred crime.

“I should like to point out that if I am required by the captioned statute to release the results of all investigations to the public, there would be little or no advantage in making investigations, for any defense counsel could, under that statute, demand and see all the information gained by investigation except the testimony taken. It is my feeling that the legislature intended that the facts gathered by investigators as reported on forms No. 13 and No. 27 be opened to public inspection, but I do not feel that they intended that all confidential investigation except testimony should be available to the public. Will you please give me your opinion on this important matter as several cases are pending in which I have been asked to release information directly bearing on criminal cases?”

Section 3737.08, Revised Code, requires certain specified officials, most notably the chiefs of various fire departments throughout the state, to investigate the cause, origin and circumstances of all fires occurring within their respective jurisdictions. These persons are required to submit to the state fire marshal, upon forms prescribed by the marshal, a written statement setting forth all pertinent information relating to the cause and origin of each fire.

Forms numbered 13 and 27, which you have enclosed with your request, are apparently used for this purpose, and contain in large part such general information as the date, time and location of the fire, the names and addresses of the owner and occupant, an estimate of the loss suffered, the class and kind of property destroyed and the apparent cause of the fire. In addition, the person submitting the report is required to state whether, in his opinion, a further investigation is warranted, and the circumstances upon which this opinion is based.

Sections 3737.09 and 3737.10, Revised Code, provide as follows:

Section 3737.09:

“If in the opinion of the fire marshal further investigation is necessary, he, or an assistant fire marshal, shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts, or to have means of knowledge in relation to the matter concerning which an examination is required to be made, and cause such testimony to be reduced to writing.”

Section 3737.10:

“If the fire marshal or an assistant fire marshal, is of the opinion that there is evidence sufficient to charge a person with arson or a similar crime, he shall arrest such person or cause him to be arrested and charged with such offence. Such marshal or assistant shall furnish the prosecuting attorney such evidence, with the names of witnesses, and a copy of material testimony taken in the case.”

Section 3737.13, Revised Code, provides that the investigation conducted pursuant to the above quoted sections may be private, and that the fire marshal may exclude from the place where such investigation is conducted, all persons not required to be present.

In addition to forms numbered 13 and 27, you have submitted for my consideration certain other investigation report forms. These forms contain such information as the names of persons contacted during the course of an investigation, the names of witnesses from whom statements have been taken, the nature of inflammable substance found at the fire scene, a record of the photographs taken, laboratory findings on evidence which was discovered, suggested questions for polygraph or lie detector tests, etc.

The problem with which you are concerned is whether Section 3737.22, Revised Code, requires you to disclose, upon request, the information contained in these reports. This section provides as follows:

“The fire marshal shall keep in his office a record of all fires occurring in the state, the origin of such fires, and all facts, statistics, and circumstances relating thereto which have been determined by investigation. Except for the testimony given upon an investigation, such record shall be open to public inspection and such portions thereof, as the superintendent of insurance deems necessary, shall be transcribed and forwarded to such superintendent within fifteen days from the first day of January each year.”

It is apparent that if the reports to which you refer are considered as “records,” and therefore “open to public inspection” within the meaning of this statute, any person suspected or accused of having committed arson or some related crime would be able to discover the nature and extent of much, if not all, of the evidence which has been accumulated against him. For reasons of public policy, reports and communications of this nature are therefore ordinarily considered to be secret and not open to public inspection, See 45 American Jurisprudence, 433.

Although the question which you have proposed has, to my knowledge, never been presented for the determination of an Ohio court, this same question was decided by the Supreme Court of Wisconsin in the case of *State ex rel. Spencer v. Freedy*, 198 Wisconsin, 388. The statutes construed by the Wisconsin court were identical in substance with those now under consideration. The first paragraph of the syllabus in the *Spencer* case is as follows :

“Under sub. (3), sec. 200.19, Stats., providing that the state fire marshal ‘shall keep \* \* \* a record of all fires occurring in the state, together with all facts, statistics, and circumstances, including the origin of the fires, which may be determined by the investigation,’ and that ‘said statistics shall \* \* \* be open to public inspection,’ such right of public inspection does not include reports and communications made to the fire marshal by those conducting investigations into the origin of fires, since it is merely his determinations that become ‘records’ in his office in the nature of statistics open to public inspection.”

The court reasoned that only the records of those facts, statistics and circumstances *which were determined* by investigation constituted public records, and not the reports and communications upon which this determination was based.

The court continued as follows at page 391 of the opinion :

“\* \* \* The various reports, correspondence, and examinations made with reference to any particular fire carry no public

interest, but statistics covering all fires, showing their causes, the facts and circumstances under which they originate, have an educational value, and this is what the legislature intended to make available to the public.”

The court also stated that the manifest purpose of the law was to apprehend and punish those persons who are guilty of the crime of arson, and that to allow disclosure of these reports would “frustrate the attainment of the purposes of the law.”

I am in agreement with the conclusion reached and the reasoning adopted by the Wisconsin court in the Spencer case. Accordingly, it is my opinion and you are advised that reports and communications prepared by investigators within the division of state fire marshal, pursuant to an investigation conducted in accordance with the provisions of Sections 3737.09 through 3737.13, Revised Code, are not “records” within the meaning of Section 3737.22, Revised Code, and are therefore not “open to public inspection” within the meaning of that section.

Respectfully,

C. WILLIAM O'NEILL

Attorney General