

OPINION NO. 85-087**Syllabus:**

Appraisal cards which are kept by the office of the county auditor and which contain information used in the valuation and assessment of real property for purposes of taxation are subject to public inspection pursuant to R.C. 149.43 and R.C. 5715.07, and disclosure of such documents does not violate either R.C. 5715.49 or R.C. 5715.50. (1931 Op. Att'y Gen. No. 3703, vol. III, p. 1295, approved and followed.)

To: Michael G. Spahr, Washington County Prosecuting Attorney, Marietta, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 26, 1985

I have before me your opinion request in which you ask whether a county auditor is required or permitted to disclose the contents of an appraisal card kept by the county auditor to anyone who requests to examine the card. Concerning the information contained on the appraisal card, your letter states:

One side of the [appraisal] card covers such things as transfers and valuation. The other side lists details of structures. The actual card is not an official form which is required to be kept, but much of the information contained thereon is required....

....

This card is obviously used by the appraisers in determining valuation and thereby assessments.

R.C. 149.43(B) requires generally that public records be made available to the public for inspection and copying at all reasonable times during regular business hours. R.C. 149.43(A) defines a public record, for purposes of R.C. 149.43, as:

any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except medical records, records pertaining to adoption, probation, and parole proceedings, records listed in division (A) of section 3107.42 of the Revised Code, trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law. (Emphasis added).

In order to determine whether the appraisal card is subject to disclosure pursuant to R.C. 149.43(B), it is first necessary to determine whether the card is a public record, as defined in R.C. 149.43(A). For purposes of R.C. 149.43, the term "records" is defined as, "[a]ny document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." R.C. 149.001(G). See generally 1983 Op. Att'y Gen. No. 83-003 (types of materials which constitute records as defined in R.C. 149.40 (currently in division (G) of R.C. 149.001)).

From the information provided in your letter, it appears that the appraisal cards contain information used by the county auditor in carrying out his duties concerning the valuation and assessment of real property. See generally R.C. 5713.01 ("[t]he county auditor shall be the assessor of all the real estate in his county for purposes of taxation..."); R.C. 5713.03 ("county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with [R.C. 5713.31]..."); R.C. 5713.31 (county auditor's valuation of agricultural land); R.C. 5715.01 ("[c]ounty auditors shall, under the direction and supervision of the [tax] commissioner, be the chief assessing officers of their respective counties, and shall list and value the real property within their respective counties for taxation in accordance with this section and sections 5713.03 and 5713.31

of the Revised Code and with such rules of the commissioner"); 9 Ohio Admin. Code Chapter 5705-3 (valuation and assessment of real property). Since the appraisal cards are created by the office of the county auditor and serve to document the activities of the auditor's office, such cards constitute "records" for purposes of R.C. 149.001(G) and R.C. 149.43.

As set forth above, a "public record," as that term is used in R.C. 149.43, is defined, with certain exceptions, as "any record that is kept by any public office, including...county...units."¹ R.C. 149.43(A). Since the appraisal cards are records kept by the office of the county auditor, such cards fall within the general definition of a public record. See generally Kloeb v. Mercer County Commissioners, 4 Ohio C.C. (n.s.) 565 (Cir. Ct. Mercer County 1903) (county auditor is a public officer). It is, however, necessary to examine various other provisions of the Revised Code to determine whether such appraisal cards are "records the release of which is prohibited by state or federal law," R.C. 149.43(A), and, therefore, fall within an exception to the definition of public records.

You specifically ask whether R.C. 5715.49 or R.C. 5715.50 prohibits the release of the appraisal cards. I turn first to an examination of R.C. 5715.49, which states:

No former or present county auditor or member of a county board of revision shall divulge, except in the performance of his duties or upon the order of the department of taxation, or when called upon to testify in any court of [sic] proceeding, any information acquired by him in the exercise of the powers vested in him by the laws relating to taxation, or while claiming to exercise any such powers, as to the transactions, property, or business of any person, company, firm, corporation, association, or partnership. Whoever violates this section shall thereafter be disqualified from acting in any official capacity in connection with the assessment or collection of taxes or recoupment charges. (Emphasis added.)

In order to determine whether the appraisal cards about which you ask contain information which generally may not be released under R.C. 5715.49, I must examine the powers vested in the county auditor by R.C. 5713.01, which states in part:

¹ You mention in your opinion request that the appraisal card is not "required to be kept." Given the recent amendment of R.C. 149.43, the fact that the card is not "required to be kept" is no longer of significance. Prior to the amendment of R.C. 149.43 in Am. Sub. H.B. 238, 116th Gen. A. (1985) (eff. July 1, 1985), R.C. 149.43(A) defined a public record, in part, as "any record that is required to be kept by any governmental unit." Am. Sub. H.B. 84, 115th Gen. A. (1984) (eff. March 19, 1985). See generally State ex rel. Plain Dealer Publishing Co. v. Lesak, 9 Ohio St. 3d 1, 457 N.E.2d 821 (1984); State ex rel. Milo's Beauty Supply Co. v. State Board of Cosmetology, 49 Ohio St. 2d 245, 246, 361 N.E.2d 444, 445 (1977) ("[t]his court has thus enunciated a twofold test to determine the existence of 'public records': (1) the records must be kept by a governmental unit, and (2) the records must be specifically required to be kept by law").

The auditor shall view and appraise or cause to be viewed and appraised at its true value in money, each lot or parcel of real estate...and the improvements located thereon at least once in each six-year period and the taxable values required to be derived therefrom shall be placed on the auditor's tax list and the county treasurer's duplicate for the tax year ordered by the commissioner pursuant to [R.C. 5715.34]....

....
The auditor shall make the necessary abstracts from books of his office containing descriptions of real estate in such county, together with such platbooks and lists of transfers of title to land as the auditor deems necessary in the performance of his duties in valuing such property for taxation....

The auditor, with the approval of the tax commissioner, may appoint and employ such experts, deputies, clerks, or other employees as he deems necessary to the performance of his duties as assessor....

Such experts, deputies, clerks, and other employees, in addition to their other duties, shall perform such services as the auditor directs in ascertaining such facts, description, location, character, dimensions of buildings and improvements, and other circumstances reflecting upon the value of real estate as will aid the auditor in fixing its true and taxable value....

In the performance of his duties in assessing and valuing real property for tax purposes, the auditor considers such things as transfers of the property, the description, character, dimensions of buildings and improvements, and other factors reflecting upon the value of the real estate. R.C. 5713.01. The information included on the appraisal cards, i.e., transfers, valuation, and details of structures, clearly falls within the types of information used by the auditor in executing his duties as assessor in fixing the true and taxable value of real property in his county. Since such information is acquired by the auditor in the exercise of his duties as assessor of property for taxation purposes and such information relates to property of persons, companies, firms, corporations, associations, and partnerships, such information appears to fall within the type of information the release of which is generally prohibited by R.C. 5715.49.

As noted in your opinion request, however, R.C. Chapter 5715 contains a provision requiring disclosure of certain documents located in the office of the county auditor or county board of revision. Specifically, R.C. 5715.07 states:

All files, statements, returns, reports, papers, or documents of any kind relating to the assessment of real property which are in the office of a county auditor or county board of revision or in the official custody or possession of such officer or board shall be open to public inspection. (Emphasis added.)

Pursuant to this statute, those papers or documents "relating to the assessment of real property" which are kept in the county auditor's office "shall be open to public inspection. The legislature's use of the word "shall" indicates the mandatory nature of the duty to keep such records open to

public inspection. See Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one).

As discussed above, the information contained on the appraisal cards about which you ask is used by the appraisers to determine valuation and assessment of property. See generally R.C. 5713.01 (describing types of information used by auditor in fixing true and taxable value of real estate). Since the appraisal cards are documents "relating to the assessment of real property" and are kept in the office of the county auditor, it appears that R.C. 5715.07 requires such cards to be open to public inspection.

The conflict between the prohibition from disclosure set forth in R.C. 5715.49 and the requirement to keep certain information open to public inspection as required by R.C. 5715.07 was addressed in 1931 Op. Att'y Gen. No. 3703, vol. III, p. 1295. Although 1931 Op. No. 3703 was issued prior to the enactment of R.C. 149.43, the opinion discussed the common law rule that records made by public officials are open to public inspection, unless the legislature has prohibited such access. In light of this general rule, the opinion construed the provisions of G.C. 5591 (currently at R.C. 5715.07) and G.C. 12924-7 (currently at R.C. 5715.49)² and concluded, at 1298, that, the latter:

relates to the matter of divulging private information as to a person's property, transaction or business, and not to information as to the assessment of real property. This matter must necessarily be made public under the statutes

² G.C. 5591 stated:

All files, statements, returns, reports, papers or documents of any kind whatsoever in the office of a county auditor or of a county board of revision or in the official custody or possession of such officer or board relating to the assessment of real property shall be open to public inspection.

1931 Ohio Laws 714, 765 (Am. S.B. 323).

G.C. 12924-7 stated:

Whoever, being or having been a county auditor or a member of a county board of revision, divulges, except in the performance of his duties or upon the order of the tax commission of Ohio, or when called upon to testify in any court or proceeding, any information acquired by him in the exercise of the powers in him vested by any provision of the laws relating to taxation or while claiming to exercise any such powers, in respect to the transactions, property or business of any person, company, firm, corporation, association or partnership, shall be fined not less than fifty dollars nor more than one thousand dollars, and shall thereafter be disqualified from acting in any official capacity whatever in connection with the assessment or collection of taxes.

1931 Ohio Laws 714, 775 (Am. S.B. 323).

providing for the publication thereof. I do not think it logical to construe Section 12923-7 [sic] as providing a penalty for perhaps prematurely divulging information which subsequently must be published. The section clearly relates to information secured in connection with tax returns and not to information bearing upon valuations assessed by public officials....

...I do not think that Section 12924-7, General Code, may be properly said to be subject to a construction which would result in a deviation from well established principles with respect to public records in the office of the county auditor. (Emphasis added.)

See generally R.C. 319.28 (auditor's compilation of general tax list of real and public utility property, setting forth the owners' names, description of real estate, value, and names of various public utilities); R.C. 319.29 (auditor's compilation of personal property tax list, listing names and aggregate value of personal property); R.C. 5711.02 (filing with county auditor of taxable property return); R.C. 5711.03 (listing of taxable property as to ownership or control, valuation, and taxing districts in return); R.C. 5721.03 (publication and contents of delinquent tax list); R.C. 5727.08 and R.C. 5727.10 (report of public utilities, except freight line and equipment companies, and assessment of taxable property by tax commissioner). Thus, 1931 Op. No. 3703 appears to have reasoned that the information required to be disclosed by G.C. 5591 (currently at R.C. 5715.07) is different from information secured in connection with tax returns as described in G.C. 12924-7 (currently at R.C. 5715.49) which generally may not be disclosed. The opinion then concluded that the disclosure of information as required by G.C. 5591 (currently at R.C. 5715.07) is not a violation of G.C. 12924-7 (currently at R.C. 5715.49).

Since the pertinent provisions of the statutes discussed in 1931 Op. No. 3703 have been carried forward into the current versions of R.C. 5715.07 and R.C. 5715.49, and since I find the reasoning in that opinion to be persuasive, I concur in the conclusions set forth in that opinion. In addition, I note that R.C. 5715.49 is a penal statute. R.C. 5715.99(E) ("[w]hoever violates section 5715.49 or 5715.50 of the Revised Code shall be fined not less than two hundred nor more than one thousand dollars"). Pursuant to R.C. 2901.04(A), "[s]ections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused." Thus, although certain information generally may not be disclosed under R.C. 5715.49, if such information is required by R.C. 5715.07 to be open to public inspection, it appears that the latter information is excepted from the prohibition contained in R.C. 5715.49.

You have also asked about the provisions of R.C. 5715.50, which states:

No former or present expert, clerk, or employee of a county auditor, county board of revision, or the tax commissioner, and no former or present deputy, assistant, or agent of the tax commissioner shall divulge, except in the performance of his duties or in his report to the county auditor, the county board of revision, or the tax commissioner, or when called upon to testify in any court or

proceeding, any information acquired by him in the exercise of the powers vested in him by any law, or while claiming to exercise such powers, as to the transactions, property, or business of any person, company, firm, corporation, association, or partnership. Whoever violates this section shall thereafter be disqualified from acting in any official capacity in connection with the assessment or collection of taxes or recoupment charges. The names of officers and directors of any corporation are not within the prohibition of this section. (Emphasis added.)

R.C. 5715.50 describes the information which may not be disclosed in terms almost identical to those set forth in R.C. 5715.49. R.C. 5715.49 prohibits the release of information acquired by the auditor or certain other persons in the exercise of the powers vested in him by the laws relating to taxation, while R.C. 5715.50 generally prohibits the release of information obtained by any person enumerated in the statute in the exercise of the powers vested in him by any law. It appears, therefore, that the types of information which may not be disclosed under R.C. 5715.50 may be broader than those set forth in R.C. 5715.49. I believe, however, that R.C. 5715.07 is an exception to the prohibition set forth in R.C. 5715.50 in addition to that set forth in R.C. 5715.49.³

Like R.C. 5715.49, R.C. 5715.50 contains a prohibition, with certain exceptions, against the disclosure of information acquired by certain enumerated persons in the exercise of their statutory powers. Such information may, as discussed above, include information relating to the assessment of real property. Pursuant to R.C. 5715.07, the latter information when in the office of the county auditor or county board of revision is required to be open to public inspection. Because R.C. 5715.50 and R.C. 5715.49 are so similar, I can find no basis for distinguishing between the application of R.C. 5715.07 to both statutes and must conclude that R.C. 5715.07 is, for the reasons discussed above in regard to R.C. 5715.49,

³ In Meadowlake Corp. v. Board of Revision, Nos. CA-5542 and CA-5658 (Ct. App. Stark County 1981), the court discussed whether an appraisal record in the possession of the county board of revision prior to a hearing before the board was a public record. The court concluded, slip op. at 8, that, "this appraisal was not a public record, since there is no statute or regulation requiring the Board of Revision to prepare or maintain an appraisal of this type." As discussed in footnote one of this opinion, R.C. 149.43 no longer defines a public record in terms of whether such record is "required to be kept." In addition, the court concluded that the record was a trial preparation record, and thus not a public record for purposes of R.C. 149.43. The court, however, further found that R.C. 5715.50 prohibited the release of the appraisal document prior to its use as evidence before the board of revision. In discussing the interrelation of R.C. 5715.50 and R.C. 5715.07, the court stated, slip op. at 9: "once the appraisal report is presented to the Board of Revision at its hearing, ...there is a guaranteed right of access to the information as provided in R.C. 5715.07." The court thus implied that such right of access did not exist prior to the hearing, but did not set forth any reasoning in support of this conclusion.

also an exception to the prohibition set forth in R.C. 5715.50. See 1931 Op. No. 3703. See generally R.C. 5715.99(E) (providing a penalty for violation of R.C. 5715.50).

Since neither R.C. 5715.49 nor R.C. 5715.50 specifically prohibits the release of appraisal cards which are in the office of the county auditor and which contain information concerning the assessment and valuation of real property for purposes of taxation, and since such information is specifically required to be open to public inspection pursuant to R.C. 5715.07, such appraisal cards are not "records the release of which is prohibited by state or federal law," R.C. 149.43(A). R.C. 149.43, therefore, requires that the appraisal cards, as public records, be available to the public at all reasonable times during regular business hours for inspection and copying.

Based on the foregoing, it is my opinion, and you are advised, that appraisal cards which are kept by the office of the county auditor and which contain information used in the valuation and assessment of real property for purposes of taxation are subject to public inspection pursuant to R.C. 149.43 and R.C. 5715.07, and disclosure of such documents does not violate either R.C. 5715.49 or R.C. 5715.50. (1931 Op. Att'y Gen. No. 3703, vol. III, p. 1295, approved and followed.)