

121.

DISAPPROVAL—GRANT OF EASEMENT TO LAND IN JACKSON TOWNSHIP, MUSKINGUM COUNTY, OHIO.

COLUMBUS, OHIO, February 10, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain grant of easement, No. 433, conveying to the State of Ohio, for the purposes therein stated, a certain tract of land in Jackson Township, Muskingum County, Ohio.

Upon examination of the above instrument, I find that the property in question appears to be in the name of George B. Vickers, deceased, and signed by Daisy D. Vickers, his wife. Since there is no authority granting Mrs. Vickers power to execute this easement, I am returning the same to you without my approval endorsed thereon.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

122.

RETAIL FOOD VENDOR'S LIST—AVAILABILITY TO PUBLIC LIMITATION, WHEN—NO AUTHORITY TO PREPARE LIST FOR PRIVATE PERSON.

SYLLABUS:

The Tax Commission has no authority to prepare and deliver to private persons a list of all retail food vendors in the State of Ohio prepared by the Tax Commission pursuant to the authority of Section 5546-5, General Code; however, the Tax Commission must make this information available to the public generally, 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 Tax Commission.

COLUMBUS, OHIO, February 11, 1937.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN: I have your inquiry of recent date, which reads as follows:

"The Ohio Retail Grocers and Meat Dealers' Association has requested the Tax Commission to prepare a list of all retail food venders, which list is to be used by the manufacturers, wholesalers, and retailers in the food industry in notifying such retailers of the minimum retail prices named by the Fair Trade Council and to comply with the provisions of the Ohio Fair Trade Practice Act passed by the Legislature in 1936, being H. B. No. 609.

The names and addresses of all retail food dealers were secured by the Tax Commission for use in administering the Ohio Sales Tax Act.

The Tax Commission requests your opinion on the two questions involved which are as follows:

(1) May the Tax Commission lawfully prepare and deliver to the above named organization a list of such retail dealers in food?

(2) If such a list may be lawfully furnished, should a charge be made for the preparation of this list and what disposition should be made of the fee so collected?"

The Tax Commission of Ohio is a creature of the Legislature and, as such, may exercise only those powers expressly delegated to it, together with those powers necessarily incidental to the proper execution of its express powers. This principle is too fundamental to require the citation of authority.

The legislature has given the Tax Commission the power to furnish data or information under the authority of the following statutes: Section 1465-33, General Code, provides in part:

"* * * The commission may adopt rules and regulations governing the interchange of data or information with the proper officer, board or commission of any other state or of the Federal Government and may, pursuant to such rules and regulations, furnish any data or information in its possession or coming to its knowledge to any such officer, board or commission under reciprocal arrangements whereby the commission shall receive like information from such officer, board or commission. No member, deputy, employe, assistant or agent of the commission who shall furnish such data or information pursuant to such rules and regulations and arrangement so entered into shall be deemed guilty of any offense defined by section 12924-8, of the General Code."

Section 1465-34, General Code, provides :

“When called upon by any officer, board or commission, now existing or hereafter created, of the state or any political division thereof, the commission shall furnish any data or information to such officer, board or commission, and shall, so far as possible, aid and assist such officer, board or commission in performing the duties of his or its office. All state, county and local officers shall make and forward to the commission, upon its written order, such transcripts of records, or parts thereof and other information on file in their respective offices or in their possession, as are deemed necessary by the commission to properly and effectually carry into operation the provisions of the laws which the commission is required to administer.”

Since the foregoing statutes specifically enumerate the persons or agencies to whom the Tax Commission may furnish data or information, it is a reasonable inference that the legislature did not intend that anyone else should be given information in the possession of the Tax Commission. Furthermore, the preparation of the requested list would no doubt require a substantial expenditure of money, and the spending of public funds requires express statutory authority.

There is only one statutory provision that might be offered as authority for your Commission to furnish the requested list. Section 1465-33a, General Code, provides :

“In addition to its other powers and duties the tax commission of Ohio shall maintain a continuous study of the practical operation of all the laws which it is required to administer and of all the taxation and revenue laws of the state; and such study shall likewise embrace the manner in which and the extent to which such existing laws in practice provide revenue for the support of the state and its local subdivisions and the probable effect upon such revenue of possible changes in such existing laws, and the possible enactment of measures providing for other forms of taxation. For this purpose the commission may establish a section of research and statistics, and appoint the necessary employes therein, who shall be in the unclassified service of the civil service of the state. The results of and information obtained from such study shall be available to the members of the General Assembly and the public generally.”

You will note, however, that the foregoing statute only requires the Tax Commission to make *available* to the public, generally, the results and information obtained from these research studies which, of course, is far short of requiring the Tax Commission to *furnish* the results of its research studies.

Furthermore, we presume the list of all retail food vendors in the State of Ohio was prepared pursuant to the authority of Section 5546-5, General Code. This section provides for the enforcement of the Sales Tax Act, which we quote in part as follows:

“The commission shall design and procure the prepaid tax receipts herein provided for. The commission shall enforce and administer the provisions of this act, which is hereby declared to be one of the laws which the commission is required to administer within the meaning of sections 1465-9, 1465-12, to 1465-30, inclusive, 1465-32, 1465-34 and 12924-3 of the General Code.”

In the light of Section 5546-5, General Code, even the requested list could not be brought within the authority of Section 1465-33a, General Code, because it was not prepared pursuant to the authority of the latter statute. However, proceeding upon the assumption that the list in question is a public record, it is well settled that your Commission must make it available to the interested Association. Under the decision of *Wells vs. Lewis*, 12 O.D. (N.P.) 170, public records have been defined as memoranda made by a public officer authorized to perform that function. As has been pointed out, the list of retail food vendors was prepared pursuant to the authority of Section 5546-5, General Code.

In the case of *State of Ohio, ex rel. The Withworth Bros Co. vs. Dittey, et al. Board of the Tax Commission of Ohio*, 12 O.N.P. (N.S.) 319, the relator brought an action in mandamus to compel the Tax Commission to permit an examination of the records and reports of corporations for the purpose of obtaining information to be used in the publication of a business directory pertaining to corporations. In allowing the relator to make such an examination, the court held:

The proceedings of the Tax Commission of Ohio constitute a public record, and subject to proper regulation these records are open to inspection by any and all persons who choose to examine them, regardless of their interest or lack of interest in the subject matter.”

I believe the present facts present a stronger case than contained in *Withworth vs. Dittey*, supra, for making the records of the Tax Commission available to private interests in that the requested information in the present case was not compiled pursuant to a mandatory statute and there is no element of confidential information in the present case such as existed in *Withworth vs. Dittey*, supra.

The right to inspect public records at any time is 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 officer having custody of the same. The right of inspection may reasonably be extended to the making of a memorandum or copy of the list of retail food vendors. *Words and Phrases*, 1st Ed., Vol. 4, page 3657 :

“The right of a member of a political party to inspect the enrollment of the registered voters of his party includes the right to make a copy of the list of names found there, providing such member in copying, does not take up unnecessary time or interfere with the right of inspection by any other member. *People vs. General Committee*, 49 N. Y. Supp., 723, 728, 25 App. Div., 339.”

In view of the absence of any express or incidental statutory authority, I am of the opinion that your Commission may not lawfully prepare and deliver to the Ohio Retail Grocers & Meat Dealers Association a list of all retail food vendors.

As suggested, however, it seems perfectly clear that the Ohio Retail Grocers & Meat Dealers Association has the right to make a copy of the list in question through the use of its own facilities, subject, however, to the limitations hereinbefore outlined.

Inasmuch as your Commission may not legally furnish the requested list, it is unnecessary to answer your second inquiry.

Respectfully,

HERBERT S. DUFFY,
Attorney General.