

3703.

PUBLIC RECORDS—PRELIMINARY DATA OF COUNTY AUDITOR OPEN FOR PUBLIC INSPECTION—VALUATION OF PERSONAL PROPERTY MAY BE INSPECTED BEFORE ENTIRE ASSESSMENT ROLL COMPLETED—AUDITOR NOT CRIMINALLY LIABLE.

SYLLABUS:

1. Preliminary data in the hands of the county auditor, including estimates of valuation, prior to the time of submission to the board of revision, is open for public inspection.

2. After the county auditor has fixed a definite valuation on personal property, the documents showing such valuation are open for public inspection, notwithstanding the fact that the entire assessment roll may not be made up for the board of revision.

3. The opening of such estimates for public inspection prior to submission to the board of revision by the county auditor, does not constitute a violation of Section 12924-7, General Code.

COLUMBUS, OHIO, October 26, 1931.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Your letter of October 23, 1931, is as follows:

“A question of importance to each of the eighty-eight counties has arisen in regard to the re-appraisement of real estate in Hamilton County and County Auditor R. H. has submitted the matter to me for an opinion.

As you know the sexennial appraisement of real estate is being made in this county. The field work of the deputies and experts has been about completed, and it has now become the duty of the County Auditor in accordance with the decision of *Boeckling vs. Schwer*, 122 Ohio State, 40, 43, to personally place a definite valuation on the 237,000 parcels of land in this county, which valuations will when completed be submitted to the Board of Revision and thereafter be advertised in accordance with the provisions of Sections 5605 and 5606, General Code.

The Auditor recently announced an estimated duplicate to the Budget Commission in accordance with the provisions of Section 5625-19, General Code. Shortly thereafter requests were received in the mail for valuations, and there have been a number of people who have called in person to obtain their valuations.

Of course, it is obvious that there is no provision that requires the Auditor to mail information until after the Board of Revision has approved the assessment roll. However, even though a definite procedure is set forth in Sections 5599, 5605 and 5606, G. C., attention has also been called to the provisions of Section 5591, G. C., that ‘all files, statements, etc., shall be open to public inspection’.

There has been a very definite split of opinion in our office, some contending that the preliminary data on file is now open to inspection, while others contend that the procedure set forth in the latter part of 5605 and 5606 G. C., should first be followed before the information becomes public. A construction as to meaning of Section 12924-7, G. C.,

and a determination of the liability of the Auditor for divulging information unless in the performance of his duty, some feel, must be had.

It has been my opinion that under the provisions of Section 5579, G. C., the Auditor acted under the direction and supervision of the tax commission, and it was their duty to set forth rules not inconsistent with the statutes. However, I find no rules have been set forth, and that the Commission has left all matters of detail to each county auditor.

The Auditor advises me that he has checked over several wards to this date, and is proceeding as rapidly as possible by running day and night shifts to prepare the assessment rolls for the Board of Revision. He further advises that any delay at this time will make it impossible to get out the tax bills in December. He states that while he has no objection to giving out the preliminary estimates, if he does this for one person he must be prepared to give all persons their valuations, or where extreme demands are made a single individual may want all of the estimates. To throw the office open to public inspection of all preliminary documents now on file would cause him to entail considerable additional expense by the employment of more men, and render it almost impossible to proceed with his duty of finishing the work for submission to the Board of Revision, and the task of preparing the duplicate for the treasurer to prepare tax bills.

However, the Auditor feels that he should be guided entirely by the law. As you can readily ascertain, the question of opening the preliminary data to the public for inspection prior to submission to the Board of Revision affects every county auditor in the state. As I said before, not only is it a state-wide matter, but also because of the wide divergence of opinion among those in our office, I am submitting the following questions to you:

1. Is the preliminary data in the hands of the Auditor including estimates of valuation prior to the time of submission to the Board of Revision open for public inspection?
2. Are the papers open for inspection as to the particular parcel after the Auditor has fixed a definite valuation on a parcel of property, but before the entire assessment roll is made for the Board of Revision?
3. If the Auditor should open the estimates for the public inspection prior to submission to the Board of Revision is he violating penal section 12924-7 or is such act in the performance of his duty?

As I pointed out, the answer to these three questions calls for an interpretation of Sections 5548, 5579, 5591, 5599, 5605, 5606 and 12924-7, General Code. While the old decision of *Wells vs. Lewis*, 12 O. D. (N. P.) 170, throws some light on the question, in that case the board of equalization had passed on the valuations prior to the institution of the action. See also 11 Ohio Jurisprudence 381. These are all the authorities and statutes I can find on the subject."

An answer to your questions depends, in my judgment, upon a construction of Section 5591, General Code, in view of the provisions of Section 12924-7, General Code. These sections provide as follows:

Sec. 5591.

"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."

Sec. 12924-7.

"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."

I think that in the absence of Section 12924-7, General Code, there would be little question but that in view of the provisions of Section 5591, your first two questions must clearly be answered in the affirmative. Under the circumstances, however, an examination of the history of these two sections, and of the law prior to their enactment, becomes necessary. In 1901, the case of *Wells v. Lewis*, which you mention, was decided by the Superior Court of Cincinnati, 12 O. D. (N. P.) 170. The syllabus reads in so far as pertinent as follows:

"1. All of 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.

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It is true that in that case the board of equalization had passed on valuations but the legal principles there followed are, I think, equally applicable to the questions which you present.

This office, in an opinion appearing in Opinions of the Attorney General for 1930, Vol. II, p. 1416, set forth the general rule in Ohio as to public records in the following language:

"It is believed that under the rule in Ohio records that are made by public officials are open to the inspection of all persons interested,

whether the interest is private or public, at all reasonable hours, unless the legislature has seen fit to prohibit such inspection."

At the time of the decision in the Wells case, neither Section 5591 nor, Section 12924-7, *supra*, had been enacted. These sections were both enacted in substantially their present form as part of the same act in 1915, 106 O. L. 271, being "An act to provide for the listing and valuation of property for purposes of taxation and to repeal certain sections of the General Code relating thereto." Section 5591 was amended by the 89th General Assembly by the insertion of the clause "relating to the assessment of real property". Prior to this amendment, its provisions were even broader than now, covering all returns, reports, papers or documents in the office of the county auditor, instead of just such statements, returns, reports, papers or documents as relate to the assessment of real property.

Some significance must be attached to the fact that both of these sections were enacted by the legislature as parts of the same act. This is indicative of the absence of an intention to change the law as enunciated in the Wells case. Had there been such an intention, the broad provisions of Section 5591, General Code, would not have been enacted concurrently with Section 12924-7, General Code. It is said in Lewis' Sutherland Statutory Construction, Second Edition, Vol. 2, p. 929:

"It is presumed that the legislature is acquainted with the law; that it has a knowledge of the state of it upon the subjects upon which its legislates; that it is informed of previous legislation and the construction it has received."

Even under the original provisions of Section 5591, I should be inclined to conclude, therefore, that the inconsistency between this Section 5591 and Section 12924-7 was apparent, rather than real. This last mentioned section 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 providing for the publication thereof. I do not think it logical to construe Section 12923-7 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. This construction is even clearer in view of Section 5591 in its present form and was recognized by the comment appearing at the end of the section by Hon. Robert A. Taft, Chairman of the Special Joint Taxation Committee of the 89th General Assembly in the following language:

"This section imposes a penalty upon any county officer who divulges information regarding tax returns."

In view of the foregoing, 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. These principles are set forth in 11 O. Jur. §127 in the following language:

"As to the public records in his office the auditor is a trustee in

possession of property belonging to the people of the county. It follows that any citizen, as a beneficiary of the trust, has a right to inspect and make copies of such records at any reasonable time, subject only to the limitation that such inspection and copying shall not endanger the safety of the records, or interfere with the discharge of the auditor of his official duties in connection therewith. The right is not limited to taxpayers or to persons having a private interest to be served, and it seems that the question of motive is immaterial. It has been held that this right of inspection is not a political right, but a property right, and that it may be protected and enforced by mandatory injunction."

These preliminary estimates of valuation, and documents showing the valuations fixed by the auditor, are the records of the people of the county, prepared by their own public servants, at their own expense. They undoubtedly have the right to inspect their own property. The legislature has guaranteed that right by the enactment of Section 5591, *supra*.

It must, of course, be borne in mind that as in the case of any other public documents which are open to inspection of the public, reasonable rules may be adopted so that the safety of such documents may not be endangered, so that they may be open at reasonable hours, and so that there may be no undue interference with the performance of the duties of the public officials. The auditor has important duties to perform in connection with these records at this time. His rights and duties must be respected. The general public have rights as well. Each must act reasonably, and with proper regard for the rights and duties of the other.

In specific answer to your questions, therefore, it is my opinion that:

1. Preliminary data in the hands of the county auditor, including estimates of valuation, prior to the time of submission to the board of revision, is open for public inspection.

2. After the county auditor has fixed a definite valuation on personal property, the documents showing such valuation are open for public inspection, notwithstanding the fact that the entire assessment roll may not be made up for the board of revision.

3. The opening of such estimates for public inspection prior to submission to the board of revision by the county auditor, does not constitute a violation of Section 12924-7, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3704.

STATE BOARD OF REAL ESTATE EXAMINERS—MAY REVOKE
LICENSE OF REAL ESTATE BROKER FOR FAILURE TO REMIT
DEPOSIT UNDER A DEFECTIVE LEASE.

SYLLABUS:

The State Board of Real Estate Examiners has authority, by virtue of section 6373-42, subsection 5, General Code, to suspend or revoke a license of any real estate broker who fails or refuses to remit money deposited with said broker as