

4791.

PUBLIC RECORDS—PERSONAL PROPERTY TAX RETURNS OPEN TO
INSPECTION BY EXAMINERS OF AUDITOR OF STATE.

SYLLABUS:

The provision of Section 5372-3, General Code, that personal property tax returns are not open to public inspection, does not prevent an inspection of such returns by the examiners of the Bureau of Inspection and Supervision of Public Offices for the purpose of verifying the records of the county auditor and county treasurer.

COLUMBUS, OHIO, December 6, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your recent request for opinion reads:

“Section 5372-3 of the General Code, relating to returns made by taxpayers, provides that neither the returns nor the copies of the returns shall be open to public inspection.

QUESTION: Will this provision prevent the examiners from this department, in making audits, from inspecting the returns made by the taxpayers for the purpose of verifying the accuracy of the records of the county auditor and county treasurer?”

Your question is directed specifically to the meaning of the last sentence above quoted. There is an ancient presumption of early English law, which has been generally adopted in this country, that the legislature, in the enactment of a statute, does not intend thereby to surrender any governmental rights or that such act shall affect the government. 2 Lewis' Sutherland Statutory Construction, §419; Black on Interpretation of Laws, §54; *Green vs. U. S.*, 9 Wall. 655, 19 U. S. (L. ed.) 806; *State vs. Kinne*, 41 N. H. 238; *Jones vs. Tatham*, 20 Pa. St. 398. The third branch of the syllabus of *State ex rel. vs. Board of Public Works*, 36 O. S. 409, reads:

“The state is not bound by the terms of a general statute, unless it be so expressly enacted.”

In *State ex rel. Attorney General vs. Ry. Co.*, 37 O. S. 157, 176, Judge Johnson states:

“Another canon of construction applicable to general statutes like this is: that ‘the state is not bound by the general provisions of a statute, unless it be so expressly enacted.’ Ohio ex rel vs. Board of Public Works, 36 Ohio St. 409.

This rule is of special force where any of the prerogatives, rights, titles or interests of the state are sought to be divested. *State vs. Kline*, 41 N. H. 238; Broom Leg. Max. 51. The principle is well established, and is indispensable to the security of the public right. The general business of the legislative power is to establish laws for individuals, not for the state. When its rights are to be transferred or affected, the in-

tion must be plainly expressed or necessarily implied, * *” (Italics the writer’s.)

An examination of Amended Senate Bill 323, enacted by the 89th General Assembly, and of the tax statutes generally, fails to disclose any language either of such act or of the tax statutes, which would indicate a purpose on the part of the legislature to make such returns sacred from inspection by the governmental auditing agency of the state, nor does the language of the act require the overthrow of this presumption.

However, even though this rule were non-existent, the language of the act does not prevent the examination of these returns by the auditing department of the state government. The language is that the returns shall not “be open to public inspection.” The term “public inspection,” as so used, is an ordinary term and not a technical term and should be given its generally accepted meaning. As stated by Hough, J., in *Keifer vs. State*, 106 O. S. 285, at page 289:

“The legislature must be presumed to have used the term it used in its clear, unambiguous, and generally accepted meaning unless there appears something in the text or surrounding circumstances clearly justifying a different use or meaning.”

See also, *Morrow vs. Wittler*, 25 O. N. P. (N. S.) 85; *Smith vs. Buck*, 119 O. S. 101, 105; 2 Lewis’ Sutherland Statutory Construction, §389.

I am unable to find in the act anything “clearly justifying” a different intent on the part of the legislature.

Webster’s New International Dictionary defines “public” as “open to the knowledge or purview of all” and “open to common or general use; specifically: Open to the use of the public in general for any purpose.”

While the word “public” in the English language is a much abused word, that is, it is used with so many different intended meanings that, standing alone, it is almost without connotation, the context of the phrase “public inspection” as used in Section 5372-2, General Code, indicates the legislative intent in the use of such word to be, to deprive the general public, as distinguished from the government, from the inspection of such returns required by that section to be filed. This view is given additional weight by the fact that the purpose of requiring such returns to be filed is to enable governmental officers or employes to assess a tax against the taxpayer on the basis of the information contained in such returns.

Specifically answering your inquiry it is my opinion that the provision of Section 5372-3, General Code, that personal property tax returns are not open to public inspection does not prevent an inspection of such returns by the examiners of the Bureau of Inspection and Supervision of Public Offices for the purpose of verifying the records of the county auditor and county treasurer.

Respectfully,

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