

Opinion No. 53-5840

November 4, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Charles P. Dunwiddie Director /- Traffic Section The Governor's Traffic Safety Co-ordinating Committee P. O. Box 4035 /- Coronado Station Santa Fe, New Mexico

{*258} In your letter dated October 29, 1953, you ask two questions relating to Chapter 139, Laws of 1953, as follows:

"(a) Is it necessary, mandatory, or discretionary that those reports of Motor Vehicle Accidents, as made through the various Police Departments to the Motor Vehicle Division, (the files of which are now maintained and in use by the Traffic Section of the Governor's Traffic Safety Co-ordinating Committee) be made available to insurance investigators or the public, by either this Office or the Police Department which made and transmitted those reports through the proper channels?"

"(b) Do the answers to questions asked by an investigating officer of persons involved, at the scene of an accident or in subsequent interviews, and incorporated into the written report on an official form and signed by the questioning or investigating officer, constitute a legally recognized statement of those persons?"

Section 50, Chapter 139, Laws 1953, which appears as § 68-2313 of the 1953 pocket supplement, provides as follows:

"Accident reports confidential. -- All accident reports made by persons involved in accidents or by garages shall be without prejudice to the individual so reporting and shall be for the confidential use of the division or other state agencies having use for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles, except that the division may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident. No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the division shall furnish upon demand of any person who has, or claims to have, made such a report or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the division solely to prove a compliance or failure to comply with the requirement that such a report be made to the division."

Section 1, Chapter 38, Laws of 1947, appearing as Section 40-226 of the 1941 Compilation, pocket supplement, requires the State Police to furnish to anyone upon written application accompanied by a fee of 50 [cents], a photostatic copy of accident reports investigated by the State Police. The opinion from this office dated February 14, 1952, addressed to you, refers to Section 68-529 of the 1941 Compilation, pertaining to

reporting of Motor Vehicle accidents and to Chapter 38, Laws of 1947. However, this opinion apparently failed to consider Sections 1 and 2 of Chapter 130, Law of 1947, appearing as Sections 13-501 and 502 of the 1941 Compilation, pocket supplement, which provides as follows:

"13-501. Citizens authorized to inspect public records -- Exceptions. -- Every citizen of this state has a right to inspect any public records of this state except records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions and except {259} as otherwise provided by law.

"13-502. Opportunity and facilities for inspection -- All officers having the custody of any state, county, school, city or town records in this state shall furnish proper and reasonable opportunities for the inspection and examination of all the records requested of their offices and reasonable facilities for making memoranda abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them for any lawful purpose."

Section 68-529 is considered to be superseded by the 1953 Act pertaining to Motor Vehicle accident reports and Section 50 supra, is governing. This section makes confidential all accident reports made by persons involved in accidents or by garages, and provides that such reports shall be for the confidential use of the Motor Vehicle Division or other State Agencies having use of the records for accident prevention purposes, and for other purposes.

Since the reports made confidential are limited to those made by persons involved in accidents or by garages, the reports made by police officers regarding an accident would not be considered confidential and would be subject to inspection by persons interested, either in your office or in the Police Department which made and transmitted the report. This seems to answer your first question.

In answer to your second question, statements made to an investigating officer by the persons involved or by witnesses and incorporated into the written report are a part of such report and would be subject to inspection and could be used in Court if desired, for limited purposes.

By: C. C McCulloh

Assist. Attorney General