

## Opinion No. 23-3729

August 13, 1923

**BY:** JOHN W. ARMSTRONG., Assistant Attorney General

**TO:** Requested by: Hon. L. B. Gregg, State Bank Examiner, Santa Fe, New Mexico.

### **Records of State Bank Examiner's Office Not Subject to Examination of General Public.**

#### **OPINION**

{\*86} You ask whether or not the records of the Blue Sky department of your office may be submitted by you to the inspection of the general public.

Persons, co-partnerships, associations, common-law trusts or trusteeships and corporations, doing business under the Blue Sky law, subject their books of account and affairs to you for examination. All such are required to make and file with your office quarterly statements of their financial condition. Such statements and all reports of your examinations, of course, become records of your office. You are governed, in this procedure, by the law provided for the examination of State Banks. -- Sec. 9 Chap. 44 S. L. 1921.

Sec. 16 Chap. 56 S. L. 1917, a portion of the Banking Act provides:

{\*87} "Neither the State Bank Examiner, nor his deputies or employes, nor the State Corporation Commission, nor any member thereof, nor any deputy, clerk or employee in its office shall divulge any information acquired by them in the discharge of their duties, except insofar as the same may be rendered necessary by law. The State Bank Examiner may exchange information as to the condition of banks with the United States Comptroller of the Currency and banking departments of other states. Any one who shall violate the provisions of this section shall be deemed guilty of a misdemeanor."

By special statutory provision, your office is entitled to information appertaining to any and all the affairs of a corporation. A corporation, like an individual, is entitled to some privacy in its business affairs.

"\* \* \* No stockholder or other person shall have the right to inspect said lists and books for any improper purpose or any purpose not connected with the business of the corporation." -- Sec. 921 Code 1915.

The books and lists referred to in the foregoing quotation are the transfer books, stock books and list of stockholders.

"It is quite generally conceded that there is no common law right in all persons to inspect public documents or records; and that right, if it exists, depends entirely on statutory grant." -- 23 R. C. L. 160.

We find no such statutory grant.

You state that Mr. Jack McCutcheon claiming to represent the Albuquerque Journal, in company with Judge C. J. Roberts, visited your office and demanded the financial statements of The Magee Publishing Company for their personal inspection. You state further that you have been threatened with mandamus proceedings in event of your refusal to submit such records of your office to such inspection.

We infer from the foregoing that the purpose of such inspection is to obtain matter for publication. Reasonable publicity, among all the cases, is considered essential to the healthful growth of a community. But, under the facts stated here, we see no reason to warrant your office in making the records, in question, public. Besides any liability you might incur, it would be a precedent probably unjust to corporations doing business in the State. Such procedure would doubtless be resisted in one way or another. From what we gather from an examination of the statutes and a consideration of various cases, we conclude corporations, like individuals, are entitled to some privacy in their business affairs.

If any person or corporation should waive its privileges in this respect then, of course, you might submit records concerning its affairs to persons desiring to examine same without liability for damages or prosecution under the criminal statutes.

It would not be unreasonable to request individuals, desiring an examination of such records, to state in writing the purposes for which they want to inspect the same -- thereupon this office would be in a position to better determine your authority in the premises.

If at any time you are in serious doubt as to the propriety of exhibiting records, it might be well to let parties demanding such {*\*88*} records institute such proceedings as they may think proper so that your action may be justified by the solemnity of a court order.