

Opinion No. 51-5342

March 9, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Hon. Joseph F. Tondre, Warden New Mexico State Penitentiary Santa Fe, New Mexico

{*18} This letter is in reply to your request for an opinion as to whether the financial and other business records of the Penitentiary, and the individual records of each prisoner and the records of the Prison Board are public records and subject to inspection by the press or other citizens.

Chapter 130 of the Laws of 1947, Section 13-501 -- 13-503 of the 1941 Compilation, is the statute requiring public officers to make public records accessible to citizens demanding to see them for lawful purposes. That Statute reads 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 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 {*19} opportunities for the inspection and examination of all the records requested of their respective 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."

"13-503. Violations of Act -- Penalty. -- If any officer having the custody of any state, county, school, city or town records in this state shall refuse to any citizen of this state the right to inspect any public records of this state, as provided in this act, such officer shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than two hundred and fifty dollars (\$ 250.00) nor more than five hundred dollars (\$ 500.00), or be sentenced to not less than sixty (60) days nor more than six (6) months in jail, or both such fine and imprisonment for each separate violation."

There is no question that the public records of the penitentiary are subject to inspection under the terms of Chapter 130 of the laws of 1947. The question is which of the records of the penitentiary are public records.

It must be assumed that the legislature in enacting Chapter 130 of the laws of 1947 intended by their use of the words "public records" to include those records falling into the usual legal definition of "public records."

In 53 Corpus Juris, under the general heading of records, on page 605, the following have been declared to be public records:

"All records which the law requires public officers to keep, as such officers, are public records; and whenever a written record of the transactions of a public officer in his office is a convenient and appropriate mode of discharging the duties of the office, and is kept by him as such, it is a public record. But the mere fact that a document is deposited or filed in a public office, or with a public officer, even though necessarily so deposited, or is in the custody of a public officer, does not make it a public record. Nor is every memorandum made by a public officer a public record; papers or memoranda in the possession of public officers which are not required by law to be kept by them as official records, are not public records;"

In 45 American Jurisprudence, on page 420, under the general heading of RECORDS OF PUBLIC ACTS AND WRITINGS, Section 2 states that:

"It is said that a public record is one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done, . . . whenever a written record of the transaction of a public officer in his office is a convenient and appropriate mode of discharging the duties of his office, it is not only his right, but his duty, to keep that memorial, whether expressly required so to do or not; and when kept it becomes a public document which belongs to the office rather than to the officer."

Applying these definitions to the records of the penitentiary the following conclusions must be reached:

Section 45-127 of the 1941 New Mexico Statutes requires the Superintendent of the Penitentiary to take oath and make bond to insure that he will

. . . "cause to be kept a fair, intelligible and businesslike record of the transactions of the said penitentiary, including those of a monetary character, connected with the same . . ."

{*20} Thus all fiscal and other business records pertaining to expenditures, purchases and the like are public records and open for inspection under the terms of Chapter 130 of the laws of 1947.

Section 45-130, relating to the powers and duties of the superintendent, provides that he is required to ". . . keep an account of the articles manufactured in the work shops . . ." thus the records relative to the production and sale of the brick plant, the making of license plate number tags, highway signs, the operation of the farms, and similar records are public records and subject to inspection.

Section 45-131 requires the superintendent to . . . "keep a book in which he shall enter a daily record of all the convicts under his charge, where located, how employed and

also of guards and employees," and such records are public information and subject to inspection.

Section 45-135 of the 1941 Compilation of the Laws of the State of New Mexico says that "The superintendent shall keep or cause to be kept, in suitable books, regular and complete accounts of all income, business and concerns of the penitentiary, a true account of all money received for labor, or from other sources . . ." and such records are public records and subject to inspection.

Section 45-155 of the 1941 Compilation states "It shall be the duty of the superintendent to keep a record book of all infractions of prison rules and regulations prescribed by the said board." This book being required by law is a public record and subject to inspection.

Under section 42-1704 of the 1941 Compilation the Prison Board is required to assemble considerable information relative to every prisoner. It is stated that ". . . it shall be the duty of the judge before whom the prisoner is tried and convicted, also the district attorney, to furnish such prison board together with the warrant to commitment, all information that they can give in regard to the career of the prisoner before the committal of the crime" such information being required by law become public records and subject to inspection.

Section 42-1705 requires that "When any prisoner shall be received into said penitentiary, the superintendent shall cause to be entered in a register the date of such admission, the name, age, nativity, nationality and such other facts as can be ascertained of parentage, education, occupation, and early social influences as seem to indicate constitutional and acquired defects of the prisoner, . . . Upon the superintendent's register shall be entered from time to time minutes of observed improvement or deterioration of character, and notes as to the method and treatment employed; also all alterations affecting the standing or situation of such prisoner, and any subsequent facts or personal history which may be brought officially to his knowledge bearing upon the question of the parole or final release of the prisoner." This register being required by law is a public record and subject to inspection under the terms of the 1947 statute.

The same statutory provision, 42-1705, requires that the prison physician ". . . carefully examine each prisoner when received and shall enter into a register to be kept by him, . . . a statement of the condition of the heart, lungs . . ." etc. Such record is a public record, however, under our statute in regard to public access to records, Chapter 130 of the Laws of 1947, such information is specifically excepted from public inspection.

In the quotation from Corpus Juris above there is one phrase which states "and whenever a written record of the transactions of a public officer in his office is a convenient and appropriate mode of discharging the duties of the office, and is kept by him as such, it is a public record."

{*21} In determining whether the records of the Prison Board acting as a board of parole are public records the foregoing phrase from Corpus Juris 1947 statute we must consider the foregoing phrase from Corpus Juris as well as the similar statement from Am. Jur. 45. The members of the prison board are public officers and their acts are official acts. The prison board is empowered under Section 42-1706 of the 1941 Compilation of the Laws of New Mexico to establish rules and regulations relative to parole of prisoners and are limited therein to certain requirements. They are not limited in regard to how they shall reach their determinations as to eligibility for parole, and may prescribe therefor, and reasonable mode of examination or hearing and may determine who shall be in attendance at such hearing or examination.

The records of such board may make in regard to which prisoners shall be considered for parole, and the board's decisions relative to the granting or denial of parole, clearly fall within the category described in the phrase quoted above as a record or records kept as a convenient and appropriate mode of discharging the duties of the office, and are public records subject to inspection under our statute.

I trust that the foregoing opinion will provide an adequate guide as to the requirements of the law with regard to your responsibility and duty as a public officer under the requirements of Chapter 130 of the Laws of 1947, the same being sections 13-501 to 13-503 of the 1941 Compilation, to make available for public inspection, the records of the State Penitentiary.