

Opinion No. 64-19

March 4, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Colonel Harold S. Bibo, State Personnel Director, Santa Fe, New Mexico

QUESTION

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Are the individual personnel files and records of state employees a matter of public information, and, if so, are any portions of the individual's personnel file not subject to public examination?

CONCLUSION

See analysis.

OPINION

ANALYSIS

By statute (Section 71-5-1, N.M.S.A., 1953 Compilation) "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.** "

Section 71-5-2, N.M.S.A., 1953 Compilation, provides in part:

"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 respective offices and reasonable facilities for making memoranda abstracts therefrom, during the usual business hours. .
."

In addition, Section 71-5-3, N.M.S.A., 1953 Compilation, provides that the failure of a public officer having the custody of any public record to afford reasonable opportunity to examine such records to all persons having occasion to make examination of them shall be deemed a misdemeanor.

The term "public record" was discussed in length in our prior Attorney General's Opinion No. 61-137, dated December 27, 1961. As stated therein, citing 76 C.J.S., "Records," Section 1, a record is a public record in the following situation:

"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 his office, and is kept by him as such, it is a public record."

As explained to this office by the State Personnel Director, certain information is solicited from former employers of prospective state employees to obtain data concerning reliability, honesty, capability and personality traits of applicants. This information might not be made available to the state unless a degree of confidentiality is maintained.

Section 5-4-34, N.M.S.A., 1953 Compilation, of the personnel act, provides that the state personnel board has the power to promulgate regulations to effectuate the personnel act and to make investigations, studies, and audits necessary to the administration of the Personnel Act. Also, Section 5-4-36, N.M.S.A., 1953 Compilation, sets out that the board may adopt rules pertaining to competitive entrance and promotion tests, and the qualifications, fitness and ability of applicants to perform the duties of the position for which they apply.

Under such rule making authority, it is our opinion that the state personnel board has a **limited and restricted** right to classify as confidential certain portions of an individual's personnel file which would not otherwise be made available to the State unless on a confidential or restricted basis. Such right on the part of the board should be narrowly interpreted and restrictively applied.

The provisions of Section 71-5-1, supra, contemplate some exception to the public record law. Such section contains the language that such records will be made available "except as otherwise provided by law." The personnel act empowers the personnel board to adopt reasonable rules to carry out the personnel act and under such authority it is our opinion that a limited and restricted right exists to declare confidential certain portions of an individual's personnel file. In such cases, where this right is exercised, it is our opinion that it should only be done under narrow and exact rules adopted by the personnel board and only after a finding has been made by such board that such practice is in the furtherance of the personnel act objectives and the public interest.