

## Opinion No. 16-1730

February 2, 1916

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Howell Earnest, Secretary, State Tax Commission, Santa Fe, New Mexico.

**Divulging of information by State Tax Commission in regard to the operation of a mine.**

### OPINION

{\*301} I have not sooner answered your letter of the 17th ult. because I desired to give it careful consideration and also to obtain the opinion of a member of the bar who was active in the preparation of the mine tax law, upon the question involved.

In your letter you say that the Tax Commission requests my written opinion as to how far the prohibition in the second paragraph of Section 5 of Chapter 55 of the Law of 1915, extends, that is to say, whether it is absolute in all respects or whether it is limited to what is specified in the second paragraph of Section 5 of the act. That paragraph of Section 5 of the act is as follows:

"No information derived from any examination of the books, recross (records) or accounts, of any person, company or association, operating any such mine, made pursuant to this act by the Tax Commission or anyone acting for it, shall be disclosed by any member, officer, or agent, of such Commission, except that the same may be disclosed to such Commission by any member, officer, or agent thereof for the purposes of this act and except that it become necessary as a part of the performance of the public duty of such person or of such Commission to disclose the same in any proceeding affecting the validity of such assessment or taxation, or for the prosecution for perjury of the person required to make the statement required in Section two of this act."

{\*302} The second paragraph of Section 9 to which you refer reads as follows:

"If any member of such Commission, or other person shall, contrary to the provisions of this act, disclose any information derived from any examination of the books or records of accounts of any person, company or association operating any mine or mineral land which has been made pursuant to this act by the State Tax Commission, or under its authority, such person shall be guilty of a misdemeanor, and upon conviction punished by a fine of not less than one hundred dollars, or greater than two hundred and fifty dollars."

As I understand your letter, exactly what the Commission desires to know is as to whether this prohibition as to the divulging of information extends to what is contained in

the sworn statements in writing which are required by Section 2 of the act to be made annually by all mine operators, or whether it is limited to information obtained by examinations made in accordance with authority given in the first paragraph of Section 5.

It appears to me that those annual statements must be considered as public records, just the same as tax returns made by other taxpayers to county assessors, and the information contained therein must be accessible to the public and can be properly given out by the State Tax Commission, and that the prohibition contained in the second paragraph of Section 5 refers only to information derived from examination of the books, records and accounts of mine operators made under the authority of the first paragraph of the same section. That examination may be made for the purpose of verifying the annual statement and the information obtained by that examination must not be disclosed except for the purposes specified in the latter part of the second paragraph of the section.