

Opinion No. 45-4823

December 7, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Howell Gage Superintendent Penitentiary of New Mexico Santa Fe, New Mexico

{*160} We are in receipt of your letter of November 27, 1945, in which you ask an opinion of this office as to whether or not the records of prisoners confined at the penitentiary are open to inspection by the public. You advise me that such records are kept on a prepared form, consisting of the front and back of one sheet of paper, and include the medical and personal history of the prisoner required by Section 42-1705 of the 1941 Compilation, the record of infractions of prison rules required by Section 45-153, the F. B. I. report covering all previous convictions, information concerning his conviction, record of board interviews, and present status of the prisoner.

{*161} You also state that on the bottom of the F.B.I. reports received by you, which are incorporated into the record, the following language appears:

"Notice: This record is furnished for official use only. sd/J. Edgar Hoover."

At the outset, it is observed that no part of the record could be opened for inspection without making the entire record open, since all information is contained on the same sheet of paper.

The author in 45 Am. Jur., Page 433 says:

"The right of inspection does not extend to all public records or documents, for public policy demands that some of them, although of a public nature, must be kept secret and free from common inspection, such as diplomatic correspondence and letters and dispatches in the detective police service, or otherwise relating to the apprehension, prosecution, and detention of criminals, and documents and records kept on file in public institutions concerning the condition, care, and treatment of the inmates thereof. *
* *"

This statement of law has never been questioned. A careful examination of the authorities fails to reveal even one case in which a contrary view was taken. The earliest case on this question is that of *Re Eagen*, 205 N. Y. 147, 98 N. E. 467. It is from this case that the above quoted statement, found in Am. Jur., was originally taken. It is also the basis of the statement contained in 23 R. C. L. 160, and is cited by the author of that work as a correct interpretation of the law.

In the case of *Lee v. Beach Publishing Co.*, 127 Fla. 600, 173 S. 440, the Court said:

"The appellant contends that there are certain records in the police department of a city which must be kept secret and free from common inspection as a matter of public policy. This is true."

The Court then quotes the above statement of law, citing 23 R. C. L. 160, as a correct statement of the law.

The most far reaching case dealing with the specific question here presented is that of Runyon v. Board of Prison Terms and Paroles, 26 Cal. App. 2d 183, 79 P. 2d 101. I say far reaching for the reason that California has a specific statute providing:

"The public records and other matters in the office of any officer are at all times during office hours open to inspection of any citizen of this state."

There the Court, even though confronted with this specific legislative mandate, reaffirmed the statement made in the Eagen case, and refused to order the opening for inspection of records of the Board of Prison Terms and Paroles beyond those required by law to be kept. There the Court said:

"The courts have consistently declared that in another class of cases public policy demands that certain communications and documents shall be treated as confidential and therefore are not open to indiscriminate inspection, notwithstanding that they are in the custody of a public officer or board, and are of a public nature. Included in this class are documents and records kept on file in public institutions, concerning the condition, care and treatment of the inmates thereof, and the files in the offices of those charged with the execution of the laws relating to the apprehension, prosecution and punishment of criminals. And it would seem quite clear that the letters and documents here sought to be inspected fall within the class last mentioned because it is a matter of common knowledge that in order to impartially and intelligently discharge the functions {^{*}162} of the State Board of Prison Terms and Paroles, it is essential to secure all possible information bearing upon applicants for parole; and necessarily much of the information thus obtained can be had only upon the understanding that the persons furnishing the same will be protected, and that the information imparted will be treated as confidential."

In New Mexico we have no statute providing for the inspection of public records. Further, a large part of the record kept by the penitentiary board on the prisoners is not required by law, and part, at least, is furnished only with the understanding that it only be used by officials.

In view of the fact that the above quoted statement of the law has never been questioned by any Court, the fact that New Mexico has no statute dealing with the inspection of public records, the fact that the records, as kept by your office, could not be opened in part without being opened in their entirety, it is my opinion that you are not obliged to open the prisoners' records to the public for inspection.

By ROBERT W. WARD,

Asst. Atty. General