

1973 WL 27605 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 7, 1973

\*1 The Freedom of Information Act requires that license tax reports be open to public inspection.

Mr. J. W. Lawson  
Director  
License Tax Division  
South Carolina Tax Commission  
P. O. Box 125  
Columbia, South Carolina

Dear Mr. Lawson:

This is in reply to your request for the opinion of this office on whether or not the Tax Commission can deny access to certain license tax reports required by law to be filed with the Commission. More specifically, the reports in question are as follows: Beer and Wine—Sections 65-734 and 65-744.4; Liquor—Section 65-1286.1; Tobacco Products—Section 65-724; Gasoline—Section 65-1084; Fuels other than Gasoline—Section 65-1213 and Highway Use Tax—Section 65-1233.2. Your concern as expressed to this writer is not based on a desire to deny the public access to any information concerning the operations of the Tax Commission, but rather on the desire not to divulge information of a private nature.

A Freedom of Information Act was enacted in this State in 1972 and now appears as Sections 1-20, et seq., of the Code. Section 1-20.2 states that all public records shall be open to inspection and copying. A public record is defined so as to include records which by law are required to be kept or maintained by any public agency. Records which are required by law to be closed to the public, such as income tax returns, are specifically excluded.

There have been no South Carolina court decisions interpreting the Freedom of Information Act. Similar acts have been enacted in other states, among them, Arkansas. Decisions under acts in other jurisdictions show that the courts give such legislation liberal construction leaning toward full disclosure. See [Laman v. McCord](#), 432 S. W. 2d 753 (Ark. 1968). Also, under a California statute providing for the inspection of public records, it has been held that the right of inspection may be exercised by persons in aid of lawful, although private purposes. See [Harrison v. Powers](#), 127 P. 818; 19 Cal. App. 762. At 76 C.J.S., [Records](#), Section 35, it is stated that a state has the power to grant by statute the right of inspection of public records to all persons regardless of interest. Citing [Direct Mail Service v. Registrar to Motor Vehicles](#), 296 Mass. 353; 5 N. E. 2d 545.

The United States Supreme Court, in the case of [Flint v. Stone Tracy Co.](#), 220 U. S. 107, 31 S. Ct. 342 (cited at 66 Am. Jur. 2d, [Records and Recording Laws](#), Section 25), considered the question of whether Congress could open certain corporate excise tax returns to public inspection. The argument was made that the private affairs of a corporation bore no relationship to the collection of the tax. The court dismissed the argument by saying that ‘Congress may have deemed the public inspection of such returns as a means of more properly securing the fullness and accuracy thereof.’

The aforementioned license tax reports are public documents as defined in the Freedom of Information Act, and it is the opinion of this office that they must be available for inspection by members of the public. As stated at 66 Am. Jur. 2d, [Records and Recording Laws](#), Section 14, the right of inspection by the public is subject to reasonable rules and regulations as to how the inspection shall be made. The only guideline given by the Freedom of Information Act is that the records or the reports be open to inspection and copying during the regular business hours of the custodian of the records.

Yours truly,

**\*2** John C. von Lehe  
Assistant Attorney General

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