

whether acupuncture is an acceptable means of anesthesiology or treatment of human diseases, and, if found to be, whether it falls within the authorized scope of practice of some or all of the respective schools or systems of the healing arts. Each board should, following a discussion and clarification of terms, establish by rule or regulation whether acupuncture may or may not be utilized by its practitioners.

073-51—March 12, 1973

PUBLIC RECORDS

PERSONNEL FILES OF CIVIL SERVICE EMPLOYEES

To: *Henry B. Sayler, Senator, 21st District, St. Petersburg*

Prepared by: *Joseph C. Mellichamp III, Assistant Attorney General*

QUESTION:

May the personnel files of civil service employees (including employment applications, confidential inquiries made of employers, references, etc.) be maintained under two separate headings—the first to include general qualifications and employment histories which would be open to the public, and the second to contain investigative reports and similar data which would not be available for general inspection as an exception to §119.01, F. S.?

SUMMARY:

The personnel files of civil service employees (including employment applications, confidential inquiries made of employers, references, etc.) may not be maintained under two separate headings—the first to include general qualifications and employment histories which would be open to the public, and the second to contain investigative reports and similar data which would not be available for general inspection.

To the extent that any part of AGO 050-510 is inconsistent with this opinion, said AGO 050-510 is hereby superseded.

Your question is answered in the negative.

Section 119.01, F. S., provides that all state, county, and municipal records shall at all times be open for a personal inspection by any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen.

Reference was made in your letter to AGO 050-510, Oct. 31, 1950, Biennial Report of The Attorney General, 1949-1950, p. 165, which stated that a dual filing system on merit system employees could be maintained and that the files containing investigative reports and similar data would not have to be made available for general inspection as an exception to §119.01, *supra*. However, since that opinion was rendered, not only has the career service commission replaced the merit system, but the legislature enacted Ch. 67-125, Laws of Florida, which amended Ch. 119, F. S., by, among other things, adding §119.011.

Section 119.011(1), *supra*, defines public records to mean all documents, papers, letters, maps, books, tapes, photographs, films and sound recordings or other material, regardless of physical forms or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. "Agency" is defined by §119.011(2) to mean any state, county, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law.

In AGO 071-243 it was held that reports made by engineers in connection with the collapse of the roof of a school building and received by a school board as part of

its official investigation of the incident were public records within the meaning of §119.011, *supra*.

It was determined in AGO 071-394 that the receipt by a school board of information relating to the background and qualifications of applicants for the position of superintendent for the school district was an essential part of the process of employing a superintendent. It was held further that such information was made or received pursuant to law and that such records were public records within the meaning of §119.011, *supra*. Additionally, it was stated that the process of hiring a superintendent pursuant to various provisions of law was clearly the "transaction of official business"; thus, the applications for the position of superintendent and the various confidential reports on the fitness of the applicants were certainly received in connection therewith. Any other conclusion would place an unduly restrictive construction on the words "in connection with the transaction of official business" as used in §119.011, *supra*.

In view of the fact that Art. III, §14, State Const., provides for the establishment of civil service systems for state, county, district, and municipal employees, and inasmuch as such systems have been established by general or special law and ordinances with various prescribed qualifications for employment, method of selection, and tenure of employment, it is my opinion that the receipt of employment applications and information related to the fitness of applicants is an essential requisite in the process of employing said applicants. Consequently, such materials are made or received pursuant to law and are public records. Moreover, the process of hiring applicants pursuant to the aforementioned laws is clearly the transaction of official business; thus, employment applications and confidential reports regarding the fitness of such applicants are certainly received in connection therewith.

It remains only to determine whether the records in question fall within any exception to Ch. 119, *supra*. Section 119.07(2)(a) provides that:

All public records which presently are deemed by law to be confidential or which are prohibited from being inspected by the public, whether provided by general or special acts of the legislature or which may hereafter be so provided, shall be exempt from the provisions of this section.

Further, §119.07(2)(b), F. S., provides that "[a]ll public records referred to in §§794.03, 198.09, 199.222, 658.10(1), 624.319(3),(4), 624.311(2), and 63.181, are hereby exempt from the provisions of this section."

The records in question do not fall into any of the enumerated sections, and I have been unable to locate any other statutory exceptions which would encompass them. It is a familiar rule of statutory construction that where the legislature provides express exceptions to a statute, there is a strong presumption that no other exceptions were intended. *Dobbs v. Sea Isle Hotel*, 56 So.2d 341 (Fla. 1952); 50 Am. Jur. *Statutes* §434, p. 455.

Hence, the court in *Caswell v. Manhattan Fire & Marine Ins. Co.*, 399 F.2d 417, 423 (5th Cir. 1968), refused to infer an exception to Ch. 119, F. S.:

The Florida legislature has chosen to grant a privilege from public disclosure of some records of state agencies.

* * * * *

The legislature has accorded no such privileged status to investigation reports of the State Fire Marshal. . . . No section contains even a hint that the reports are privileged. In light of the existence of specific statutory privileges for reports of other state agencies, we conclude the Florida legislature has chosen not to confer such status on reports of the Fire Marshal.

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The courts have recognized that public policy may require restrictions on the right to inspect public records. See *Patterson v. Tribune Co.*, 146 So.2d 623 (Fla. App. 1962).

While certain records of the Fire Marshal may be analogous to investigative police reports, the Florida courts have not extended the public policy exception to the Fire Marshal's records.

In the absence of statutory privilege, and in light of a general policy favoring public inspection of government records, we conclude the district court erred.

Similarly, the court in *Maxwell v. Pine Gas Corp.*, 195 So.2d 602, 603 (4 D.C.A. Fla., 1967), refusing to infer an exception to Ch. 119, *supra*, for tangible personal property tax returns, pointed out:

All state, county and municipal records are open for personal inspection of any citizen. F.S.A. §119.01. Such records are not the personal property of a public officer. *Bell v. Kendrick*, 1889, 25 Fla. 778, 6 So. 868. The Legislature has seen fit to make records of intangible personal property tax returns confidential. F.S.A. §199.101. There is no similar statutory privilege for tangible personal property tax returns.

The legislature has seen fit to create a number of express statutory exceptions to Ch. 119, *supra*; additionally, AGO 072-168 sets out certain common law exceptions such as investigative police reports and records made in connection with official police investigations. However, the records under consideration do not fall within §231.29(3), F. S., or any other exception, and, consequently, no exception can be inferred. See *State ex rel. Cummer v. Pace*, 159 So. 679 (Fla. 1935).

Based on the foregoing, it is my opinion that the personnel files of civil service employees (which files include employment applications, confidential inquiries made of employers, references, etc.) may not be maintained under two separate headings—the first to include general qualifications and employment histories which would be open to the public, and the second to contain investigative reports and similar data which would not be available for general inspection. Further, under such circumstances and by virtue of the aforementioned change in the statutory law, AGO 050-510 is no longer applicable to the state or any of its political subdivisions or to municipalities; and the same no longer controls or governs in the area of personnel files. To the extent that any part of AGO 050-510 is inconsistent with the instant opinion, said AGO 050-510 is hereby superseded.

073-52—March 12, 1973

PUBLIC OFFICERS

VACANCY IN OFFICE FOR NONFULFILLMENT OF RESIDENCY REQUIREMENT

To: J. Steven Gribble, Attorney, Charlotte County Development Authority, Port Charlotte

Prepared by: Henry George White, Assistant Attorney General

QUESTION:

Must the members of the Charlotte County Development Authority, with the exception of the at-large member, reside in the districts from which they were appointed or elected?