

LAW LIBRARY

ARIZONA ATTORNEY GENERAL

DARRELL F. SMITH, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

February 3, 1966

DEPARTMENT OF LAW OPINION NO. 66-6 (R-50)

REQUESTED BY: The Honorable Jerry L. Smith
COCONINO COUNTY ATTORNEY

QUESTION: Does a former teacher in local school district have a right to examine her personnel records in the possession of the school district officers?

ANSWER: Only to the extent that the record is not of such a nature that a disclosure might violate public policy.

A.R.S. § 39-121 provides that "Public records and other matters in the office of any officer at all times during office hours shall be open to inspection by any person."

A.R.S. § 38-431, et seq. provides that all official meetings of governing bodies at which any legal action is taken shall be open to the public.

A.R.S. § 38-421 makes it a crime for a public officer to steal, destroy, alter or secrete a public record.

The general rule under such statutes is as stated in 76 C.J.S., p. 138:

"Under a statute providing for inspection of public records and other matters in the office of a public officer, papers which are of a public nature, in which the whole public has an interest, are such 'other matters' within the statute, although they may not be public records within the statute; but the statute does not confer a right to inspect communications

Opinion No. 66-6

(R-50)

February 3, 1966

Page Two

and documents which public policy demands be treated as confidential, and papers in which the public has no interest are not such 'other matters' within the statute."

The Arizona Supreme Court in Mathews v. Pyle, 75 Ariz. 76, 251 P.2d 893, has defined a public record as follows:

"A public record, strictly speaking, is one made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public, or to serve as a memorial of official transactions for public reference. . . Also a record is a 'public record' which is required by law to be kept or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done."

The court in the Mathews decision interpreted the language of A.R.S. § 39-121 (then codified as § 12-412, A.C.A. 1939) as not requiring disclosure of matters which are confidential or of such a nature that it would be against the best interests of the state to permit a disclosure of their contents. Specifically, in this case, the Governor was held not required to disclose a report by the Attorney General of an investigation of the office of the State Land Commissioner. The Court stated that ultimately the confidentiality of the particular matter is a question for the courts to decide after a decision in the first instance by the public officer in question.

The Mathews decision was followed by the Court in Industrial Commission v. Holohan, 97 Ariz. 122, 397 P.2d 624, which involved the application of discovery proceedings to certain files of the Industrial Commission. The Court held that

Opinion No. 66-6

(R-50)

February 3, 1966

Page Three

the Industrial Commission's proceedings, orders and awards must be considered as public records, "But information which is not collected as a memorial of an official transaction or for the dissemination of information is private except as to a claimant or parties within the meaning of A.R.S. § 23-961 A, 1 and 2. . . Manifestly, much of the Commission's file is collected and used for the purpose of settling the claim of a compensation client. This information is protected from the prying of unauthorized individuals to the same extent as the records of a private person."

The law on this question has been well summarized in 20 Md. L.R. 292, where it is stated:

"The question of an individual's right to inspect governmental records depends upon two basic requirements: first, that the individual have a sufficient interest in the records or information; and second, that the records not be of such a nature that disclosure might violate the law or public policy. . . the theory that public policy demands that certain types of information possessed by the government may be kept secret has been adopted by state courts throughout the country as a basis for holding investigatory reports confidential." (Emphasis supplied.)

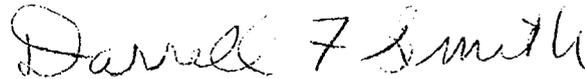
Clearly, the former teacher is an individual with a sufficient interest in the record. However, in our opinion, the school district board must make a determination as to whether all or any part of the personnel record in question is of such a nature that disclosure might violate public policy. It would seem that to the extent the record contains dates of service and amounts of compensation paid it would not be of a confidential nature. However, to the extent that it contains matters of an

Opinion No. 66-6
(R-50)
February 3, 1966
Page Four

investigatory nature, such as were involved in the Mathews or Industrial Commission cases cited above, the Board might properly determine such portions of the record to be confidential.

In any case, the final determination of the confidentiality of the record would be made by the courts.*

Respectfully submitted,



DARRELL F. SMITH
The Attorney General

DFS:mr

*For a discussion of the confidentiality of private employment data acquired by a municipal corporation for purposes of fixing compensation and wherein a disclosure of the data was not compelled, see City and County of San Francisco v. Superior Court, _____ Cal. _____, 238 P.2d 581.