

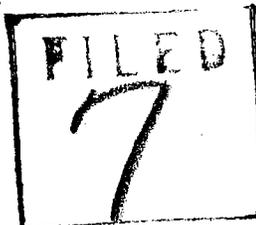
PUBLIC RECORDS:
MANUSCRIPTS, MAPPING
PROJECT:
STATE GEOLOGIST SHALL
ALLOW GENERAL PUBLIC TO
INSPECT:

Manuscripts of aero-magnetic mapping project to be placed in open file of division, as provided by Section 256.090, RSMo 1949. Manuscripts are public records, and subject to reasonable rules and regulations; state geologist shall release them for inspection of general public. He cannot release them first on

a preferential basis to mining companies which contributed funds toward expense of project.

May 1, 1959

Honorable Thomas R. Beveridge
State Geologist
Missouri Geological Survey and
Water Resources
P.O.Box 250
Rolla, Missouri



Dear Mr. Beveridge:

This department is in receipt of your request for a legal opinion, reading as follows:

"I am writing for an opinion from your office regarding the legality of a program I am proposing for the Division of Geological Survey and Water Resources in conjunction with private mining companies.

"We propose to use State-appropriated funds to do aero-magnetic mapping, under contract to the lowest qualified bidder, of an appreciable area in southeastern Missouri. We also are considering the possibility of major mining companies, contributing matching funds to this project so that a larger area may be covered with funds available. Under such an agreement, those companies which match funds with State funds would have first access to the data obtained while it is still in manuscript form and the non-contributing general public would not have access until the data are published--a period of approximately a year after the release of manuscript data to the contributors.

"In the opinion of your office, is such an agreement of preferential release of data legal? We had an identical agreement in the late 1940's for the original aeromagnetic mapping which resulted in the Pea Ridge iron discovery, but in checking the files, I cannot find any record of my predecessor, Dr. Clark, obtaining an opinion from your office.

Honorable Thomas R. Beveridge

"To me, the action is completely ethical and honest, and worked amicably in the past, but I want to make certain that there is no danger of being on thin ice legally. Should any further details or facts be needed, I will be delighted to supply them promptly."

All sections referred to herein are to RSMo 1949, unless otherwise stated.

Section 256.050 sets out the general duties of the state geologist, and reads as follows:

"It shall be the duty of the state geologist and his assistants, under the instructions and directions of the governor, to carry on, with as much expedition and dispatch as may be consistent with minuteness and accuracy, a thorough geological survey of the state, with a view to determine the order, succession, arrangement, relative position, dip or inclination and comparative magnitude of the several strata or geological formations within this state; to discover and examine all beds or deposits of mineral contents and fossils; to determine the various positions, formations, arrangement, composition, and utilization of the many different ores, clays, rocks, coals, mineral oils, natural gas, surface and ground waters, and other mineral substances as may be useful or valuable; to assemble and cause to be published an annual statistical report of the mineral production in the state; to have prepared topographic relief maps of areas and districts of the state toward the end of preparing a complete and accurate topographic relief map of the state; to apply geologic engineering principles to problems of agriculture, conservation, construction and other scientific matters that may be of practical importance and interest to the welfare of the state; to cause to be reported on maps, charts, or by other appropriate means, the results of geologic investigations as said investigations are completed; to publish or cause to be published any reports of work completed, in the form of maps, charts, pamphlets, bulletins, volumes, or circulars for general distribution; and to have prepared, and published, educational bulletins on subjects pertinent to geological studies, for distribution to educational institutions and persons interested in geology, paleontology, mineralogy, physiography, and mining."

Honorable Thomas R. Beveridge

Section 256.100, provides that with the approval of the governor the state geologist shall be authorized to negotiate for such technical work beyond the facilities of the division, and reads as follows:

"The state geologist, with the approval of the governor shall be authorized to negotiate for such technical work as may be necessary beyond the facilities of the division. He shall also purchase equipment, apparatus and supplies within the funds appropriated therefor."

From the provisions of the foregoing statutes it is obvious the state geologist is authorized to conduct the map-making project referred to in the opinion request, providing said statutory provisions are followed. The particulars, and the methods contemplated in negotiating with a private concern for services in doing the aero-magnetic mapping does not appear from the opinion request, nor have we been furnished with a copy of any tentative form of contract which may be entered into by such concern and your division. However, for the purposes of our present discussion it will be assumed that whatever the particulars, the method of negotiation, or the form of the contract to be finally entered into, that this matter will have been legally and properly consummated.

We have not been informed whether or not the manuscripts from the map-making project will be placed in the open file of your division, and if it is from this file the major mining companies referred to, will be allowed access to such documents before they will have been made available to the general public.

Section 256.090 provides when information shall be released to the public, and reads as follows:

"1. To expedite the release of general information or new discoveries the state geologist may furnish such items to the press and radio. The unpublished reports and data gathered by the state geologist and his assistants shall be maintained in an open file at the headquarters of the division. Confidential data supplied to the state geologist from outside sources shall cease to be confidential and shall be placed in the open file at a reasonable time after the completion of the project.

"2. The state geologist is hereby authorized to furnish to educational institutions, located within the state of Missouri, collections of minerals, rocks or fossils, but the division shall retain title to such collections. Educational institutions shall pay the expense of transporting said collections."

Honorable Thomas R. Beveridge

It is noted that Section 256.090 supra, requires the unpublished reports and data gathered by you and your assistants to be placed in the open file at the headquarters of your division, and that confidential information received from outside sources by you shall be placed in said file a reasonable time after completion of the project, and shall cease to be confidential.

While Section 256.090 does not expressly so provide, yet, in view of the non-confidential nature of the documents in the open file, the implication is that such documents take on the characteristics of public records, and this raises the question as to whether or not they are actually public records. The answer to this question is very material to the inquiry and must first be determined before such inquiry can be answered.

In this connection, we direct your attention to the case of *State v. Henderson*, 169 SW2d 389, in which the court discussed what documents filed in a public office are public records, and at l.c. 392, said:

"[2] In all instances where, by law or regulation, a document is required to be filed in a public office, it is a public record and the public has a right to inspect it. 53 *Corpus Juris*, Section 1, Pages 604 and 605; *Clement v. Graham*, 78 Vt. 290, 63 A. 146. Ann. Cas. 1913E, 1208; *Robinson v. Fishback*, 175 Ind. 132, 93 N.E. 666, L.R.A. 1917B, 1179, Ann. Cas. 1913B, 1271; *State ex rel. Eggers v. Brown*, 345 Mo. 430, 134 S.W.2d 23."

Again, in the case of *Disabled Police Veterans Club v. Long*, 279 SW2d 220, the court defined the term "public records" and discussed the right of the public to inspect public records, subject to certain exceptions. At l.c. 223, the court said:

"[6] Independently of the statute the term public records covers not only papers expressly required to be kept by a public officer but all written memorials made by a public officer within his authority where such writings constitute a convenient, appropriate or customary method of discharging the duties of the office. *International Union, etc. v. Gooding*, 251 Wis. 362, 29 N.W.2d 730, 735; *Conover v. Board of Education, etc.* 1 Utah 2d 375, 267 P.2d 768, 770; *People v. Shaw*, 17 Cal. 2d 778, 112 P.2d 241, 259.

"[7] Generally, any writing or document constituting a public record is subject to inspection by the public. *State ex rel. Kavanaugh v.*

Honorable Thomas R. Beveridge

Henderson, supra. Nor is it essential that the inspection of public records be limited to persons who have some legal interest to be subserved by the inspection. Neither does it detract from the right to inspect public records that it is done for others for compensation. State ex rel. Eggers v. Brown, etc., 345 Mo. 430, 134 S.W.2d 28. And the right to inspect carries with it the right to make copies. State ex rel. Conran v. Williams, 96 Mo. 13, 19, 8 S.W. 771.

"[8] This right to inspect and to copy public records is not an unlimited right. It is subject to such reasonable regulations as may be imposed to prevent undue interference with the proper functioning of the public officials involved. State ex rel. Eggers v. Brown, supra.

"[9] Furthermore, public policy demands that some public records must be kept secret and free from common inspection. In certain situations public records may, in the public interest, be withheld from public inspection. It is unnecessary to consider further this common-law exception to the right to inspect public records because the respondents have made no serious claim to come under any common-law limitation and we are unable to discover any. They are in no position to insist that any public interest will be served by keeping the requested information secret. International Union, etc. v. Gooding, 251 Wis. 362, 29 N.W.2d 730, 736."

From the definitions and descriptions given of that class of documents said to be public records in the above-cited cases, it is apparent that the manuscripts from the aero-magnetic mapping project, would be public records. The manuscripts belong to the same general class of unpublished reports and data referred to in Section 256.090, supra, and should be placed in the open file of your office.

Ordinarily, the public is entitled to inspect all public records of a public official unless their contents are of such a nature that they cannot properly be made available to the general public, as the court pointed out in the Disabled Police Veterans Club Case.

In the present instance, it is not suggested or even intimated that the contents of the manuscripts in question are of such a nature they cannot be released to the general public after the

Honorable Thomas R. Beveridge

completion of the project, but rather the contrary appears to be true. It is noted the custom is that information of this nature has previously been released by your predecessor to mining company contributors on map-making projects under the same or similar circumstances referred to. No doubt the information would not have been released if it had been believed improper, but would have been kept from the mining companies and the public.

The only reason offered for allowing the manuscripts to be first inspected by certain mining companies, before the records are made available to the general public, is that such mining companies have contributed funds to the project and should be allowed this privilege in preference to non-contributors.

With this type of reasoning we cannot agree, as we do not believe the fact that some have contributed and others have not contributed to the project should be considered in determining who shall and who shall not be allowed to inspect the records. If the manuscripts are of a nature that the public can inspect them without prejudice to the rights of the State of Missouri, then such records should be made available to the general public for inspection as soon as possible after the project has been completed.

It is believed that as custodian of these public records you have the right, and should make whatever reasonable rules and regulations you find to be necessary for the due protection and preservation of same.

It is further believed that the release of such public records on a preferential basis, only to the mining companies, which have or will have contributed funds to the map-making project in the manner you have described, before the manuscripts will have been made available to the general public, is unreasonable, against public policy, and that you are legally unauthorized to follow such a practice.

CONCLUSION

Therefore, it is the opinion of this department that manuscripts from an aero-magnetic map-making project of the state geologist, should be placed in the open file of the Division with other unpublished reports and data, in accordance with the provisions of Section 256.090, RSMo 1949. Said manuscripts are public

Honorable Thomas R. Beveridge

records, and subject to reasonable rules and regulations promulgated for their protection, the public has a right to inspect them. The state geologist is unauthorized to release such manuscripts first to mining companies which have contributed funds toward the expense of the project, but it is his duty to release the manuscripts on a non-preferential basis and to make them available for inspection of the general public.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Paul N. Chitwood.

Very truly yours,

John M. Dalton
Attorney General

PNC/ld