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An orderly determination of the question would seem to be an action of mandate against the school officials to determine the legality and reasonableness of their actions in the exclusion of any such children.

OFFICIAL OPINION NO. 20

July 1, 1953.

Mr. James M. Knapp, Director,
Indiana State Personnel Bureau,
311 West Washington Street,
Indianapolis 4, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

"The State Personnel Act in Section 40, Chapter 139, Acts of 1941, provides that all records of the division shall be public records except such records as the rules may require to be held confidential for reasons of public policy.

"The official rules of the State Personnel Board were approved by the Attorney General as to their legality and filed with the Secretary of State on April 27, 1950. In Rule 14 of these official rules all records are declared to be public except the following:

- "1. Examination material prepared and organized in advance of an announced examination.
- "2. Graded examination papers.
- "3. Personnel folders and merit rating reports.
- "4. Applications for examinations.
- "5. Employment lists.

"The anti-secrecy bill passed in the recent session of the General Assembly, Chapter 115, Acts of 1953, provides in Section 3 that all records shall be open to public inspection, except as may now or hereafter be otherwise specifically provided by law. This same section also authorizes the making of memoranda abstracts from the records so inspected.

“Chapter 115 passed the House as House Bill 248 and at that time provided for public inspection ‘for any lawful purpose.’ As finally enacted, the lawful purpose restriction was not included. In your review of the Personnel Board Rule concerning confidential records, you will notice that except for examination material, the obvious motivation for including the various items was to discourage idle curiosity about matters which applicants and employees consider their personal affairs. To permit public inspection of these personal items would be bad enough, but it would be impossible to conduct a valid examination program if test questions are available for perusal and copying.

“There are two specific questions we have in mind:

“1. Does Chapter 115 nullify that part of Personnel Board Rule 14 providing for the confidential nature of certain records?

“2. If your answer to question 1 is ‘Yes,’ is idle curiosity a sufficiently valid reason for making a request to inspect records in this office?

“This is a very serious matter in connection with the operation of our recruitment and examination program. Your immediate attention to this request will be sincerely appreciated.”

Your questions present the question of the effect of Chapter 115 of the Acts of 1953. Section 2 of said act provides in part:

“(1) The term ‘public records’ shall mean any writing in any form necessary, under or required, or directed to be made by any Statute or by any rule or regulation of any administrative body or agency of the state or any of its political subdivisions. * * *”

Section 3 of said act then gives the right of inspection of “public records” as above defined.

The above definition of “public records” limits such records for the purpose of the act to those which by statute or regulation are “required, or directed” to be in writing or where

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the statute or regulation requires a record in a "form necessary" to be in writing.

Section 40, Chapter 139, Acts 1941, as found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 60-1340 provides as follows:

"The records of the division, except such records as the rules may require to be held confidential for reasons of public policy, shall be public records and shall be open to public inspection, subject to regulations as to the time and manner of inspection which may be prescribed by the director."

The above section of the statute expressly gave to the Indiana Personnel Board authority to provide by regulation for certain records "to be held confidential for reasons of public policy." Pursuant thereto the Board adopted Rule 14 referred to in your letter. Said rule was valid when adopted except to the extent it contravened provisions of the act.

Section 19 of said Chapter 139, Acts 1941, as amended, as found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 60-1319 provides in part:

"All persons competing in any test shall be given written notice of their final earned ratings, and of their relative standing upon the eligible list or of their failure to attain a place upon the list. The papers, markings and other items used in determining the applicant's final earned ratings shall be open during business hours for inspection by the applicant or his authorized representative, except at the time an announced examination is being held for the same position or class, and except that statements of former employers of the applicants shall be considered confidential."

Under the above quoted provision, statements of former employers are confidential by the express provision of the act without rule and the other items mentioned must be made available to the applicant or his authorized representative even though made generally confidential by the rule.

Sub-section D of the above cited section provides in part:

“No minimum educational requirement will be prescribed in any civil service examination except for such scientific, technical, or professional positions the duties of which the state personnel board decides cannot be performed by a person who does not have such education. The state personnel board shall make a part of its public records its reasons for such decision.”

Under the above quoted provision such decision is a public record regardless of any provision of Rule 14.

Section 31, Chapter 139, Acts 1941, as found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 60-1331 provides in part:

“The director shall also maintain such other personnel records as he may consider desirable or as the board shall direct, and shall make available to the governor, the general assembly, the budget director, department and institution executives, and other persons having a proper interest therein tabulations and analyses of such personnel data as he has available.”

Under the above such “tabulations and analyses of such personnel data” are available to those named regardless of any rule of the department.

We also call attention to Section 45 of said act as found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 60-1345 which provides:

“Notwithstanding any provision of this act (§§ 60-1301—60-1348), there is hereby adopted such federal or state merit system, or systems, as the federal government may have established or approved, or may establish, as a condition to federal aid for any purpose to which any part of the state service as herein defined pertains; and it is hereby further provided that this act shall be administered in harmony with such federally established or approved merit system, or systems, and that in all cases where any provision of such federally established or approved merit system, or systems, hereby adopted, is in conflict with any provision of this act, then such provision of such federally estab-

lished or approved merit system or systems, so adopted shall prevail and this act shall in such case be administered as though such conflicting provision of such federally established or approved merit system or systems herein adopted were written out at length as a part of this act, that nothing in this act shall be construed as operating in such way as to result in delay or stoppage of grants-in-aid to the state of Indiana by agencies of the federal government."

Under the above section any federal requirement relating to confidentiality of records in the merit system as a condition to federal aid would prevail unless directly contrary to or in conflict with some later provision of Indiana statute.

Subject to such provisions of the Personnel Act, as above referred to, it is my opinion that said rule was valid when enacted.

Section 5 of said Chapter 115, Acts 1953, is as follows:

"Sec. 5. Nothing in this act contained shall be construed to modify or repeal any existing law with regard to public records which, by law, are declared to be confidential. Nor shall anything in this act be construed to modify or repeal any existing law, rule or regulation, with regard to the holding of executive sessions by any administrative body or agency. Provided, however, that no administrative body or agency shall, under the guise of holding an executive session, conduct public proceedings in such a manner as to defeat the declared policy of this act as set forth in Section 1 hereof." (Our emphasis.)

This presents the specific question of whether the existing regulation, No. 14, is an "existing law," with regard to public records, which "by law," declared said records confidential.

In the case of *Blue v. Beach* (1900), 155 Ind. 121, at page 130, 56 N. E. 89, 50 L. R. A. 64, 80 Am. St. 195, the Supreme Court said:

"When these boards duly adopt rules or by-laws, by virtue of legislative authority, such rules and by-laws, within the respective jurisdictions, have the force and

effect of a law of the legislature, and, like an ordinance or by-law of a municipal corporation, they may be said to be in force by authority of the State." (Our emphasis.)

In the case of *Wallace v. Dohner* (1929), 89 Ind. App. 416, at page 420, 165 N. E. 552 the court said:

"Courts have uniformly held, and the law is well settled, that *valid rules and regulations, when adopted by an administrative body in accordance with the provisions of the act by which the administrative body was created, are, in effect, a part of the statute.* Chicago, etc. R. Co. v. People (1907), 136 Ill. App. 2. However, a rule, to be valid, must be reasonable and within the authority delegated by the statute." (Our emphasis.)

In the case of *Coleman v. City of Gary* (1942), 220 Ind. 446, 44 N. E. (2d) 101, at page 458, the court said:

"This rule, duly adopted by the commission under the authority of the 1939 act, had the force and effect of law so long as it was in force."

Under the above decisions of the Supreme and Appellate Courts of this state when a board adopts a regulation pursuant to statutory authority, such rule is in effect a part of the statute, it has the same effect as a law adopted by the legislature, it is as much the law of the state as an act of the legislature.

It is therefore my opinion that to the extent said Rule 14 was valid and subject to the statutory exceptions mentioned above it is a part of the "existing law" with regard to personnel records which "by law" made them confidential prior to said Chapter 115 of the Acts of 1953 and is still in force and effect under the exception in said Section 5 of said Chapter 115.

Specifically applying the above conclusions to the five types of records and information inquired about, my opinion is as follows:

1. I am of the opinion that examination material prepared and organized in advance of an announced examination is not public.

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2. The graded examination papers of an applicant, are open to the applicant or his authorized representative together with other papers and items used in determining his final earned ratings except statements of former employers. Otherwise they are confidential.

3. Personnel folders and records maintained pursuant to Section 31, *supra*, are available to the governor, the general assembly, the budget director, department and institution executives, and "other persons having a proper interest."

4. Applications for examination are confidential with the exceptions herein noted.

5. Employment lists are confidential except as herein noted and as otherwise provided in the personnel act.

As to those records which are open to public inspection, the person requesting to examine the same need not give any reason for the request. Where the law provides a certain person or official shall have access to certain records he is entitled to examine the same without giving a reason. Where a record is only open to a "person having a proper interest" you may require the showing of a proper interest and idle curiosity alone would not be a proper interest.

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April 16, 1953.

John M. McConnell,
Lt. Col., Arty., Ind. N. G.,
Asst. Adjutant General,
The Adjutant General's Office,
212 State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of March 31st, which is as follows:

"An opinion is requested as to the legality of the sale of 146.5165 acres of land from Stout Field, Indianapolis, Indiana, by the State Armory Board under the provisions of Burns' Indiana Statutes 45-312 to 315.