

municipality, and (c) relating to citizenship or to membership in society. With these somewhat indefinite standards in mind, examining the words of the statute at issue, it is clear that a single private individual for his own personal use would have no right to a copy of the report in question. However, almost any public group which could conceivably be interested would appear to be within the scope of the very broad classification of civic groups or similar organizations whether that group was incorporated or unincorporated, temporarily or permanently associated, interested in problems over a long period of time or certain immediate problems, all which appear to be readily classifiable as designated groups.

Thus, to summarize, it is my opinion that these reports may be given only to those organizations authorized by statute. However, any group having a public interest would appear to be eligible to receive a copy of the report.

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OFFICIAL OPINION NO. 70

November 14, 1952.

Mr. Joe W. Green,  
State Veterinarian,  
Indiana State Livestock Sanitary Board,  
Room 477 State Board of Health Bldg.,  
1330 West Michigan St.,  
Indianapolis 2, Indiana.

Dear Sir:

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

“This office has been encountering some difficulty in getting prosecuting attorneys in the various judicial circuits to take proper action on matters involving criminal violations of laws and regulations, pertaining to Disease control and eradication in livestock, which this Division of State Government, is charged with the responsibility of enforcing.

“There seems to be a reluctance in a great many instances, upon the part of the prosecutors to take any

action and in other instances, devious means are often employed in order to avoid taking such action, ranging from delaying maneuvers to outright refusal to act.

“In view of the foregoing, an official opinion is respectfully requested, as to what recourse, if any, this Division of State Government might have in getting criminal proceedings instituted in cases where the prosecutor either refuses or displays a reluctance to act.

“This same difficulty has been encountered in the past as well as at the present time and as a consequence, very little has ever been accomplished in the way of securing convictions arising out of violations of the Livestock Sanitary laws and regulations.”

The Constitution concerning Prosecuting Attorneys provides as follows:

“Prosecuting attorneys.—There shall be elected, in each Judicial Circuit, by the voters thereof, a Prosecuting Attorney, who shall hold his office for two years.”

You will note that this does not provide what the duties of the Prosecuting Attorney shall be. However, there are several general statutes on this subject.

Sections 3 and 4 of Chapter 3 of the Revised Statutes of 1852 provide as follows:

“Whenever any prosecuting attorney shall receive information of the commission of any felony or misdemeanor, he shall cause process to issue from a court having jurisdiction to issue the same (except the circuit court), to the proper officer, directing him to subpoena the person therein named likely to be acquainted with the commission of such felony or misdemeanor, and shall examine any person so subpoenaed before such court touching such offense; and if the facts thus elicited are sufficient to establish a reasonable presumption of guilt against the party charged, said court shall cause so much of said testimony as amounts to a charge of a felony or misdemeanor to be reduced to writing and subscribed and sworn to by such witness, where-

upon such court shall cause process to issue for the apprehension of the accused, as in other cases.

“Such prosecuting attorneys, within their respective jurisdictions, shall conduct all prosecutions for felonies or misdemeanors and all suits on forfeited recognizances; resist applications for changing names, protect the interests of all persons of unsound mind, and superintend, on behalf of counties or any of the trust funds, all suits in which the same may be interested or involved, and shall perform all other duties required by law.”

In line with these statutes the legislature has prescribed the manner in which prosecutions may be begun. Section 110, Chapter 169 of the Acts of 1905, same being Burns' 9-901, provides the procedure for the return of an indictment and Section 118 of Chapter 169 of the Acts of 1905 as amended by Section 4 of Chapter 132 of the Acts of 1927, same being Burns' 9-908 provides that all crimes except treason and murder may be prosecuted by affidavit.

Section 119 of Chapter 169 of the Acts of 1905, same being Burns' 9-909, provides that an affidavit before being filed in Court must be approved by the Prosecuting Attorney. It reads in part as follows:

“9-909 (2151). *Prosecutor's approval—Witnesses—Continuance.*—When such affidavit has been made, as provided in the last section, the prosecuting attorney shall approve the same by endorsement, using the words ‘approved by me’ and sign the same as such prosecuting attorney and indorse thereon the names of all the material witnesses; after which, such affidavit shall be filed with the clerk, who shall indorse thereon the date of such filing, and record the same as in the case of an indictment, as provided in section one hundred and thirteen (§ 9-904) of this act.”

Pursuant to this statute it has been held that the approval provisions do not apply to indictments returned by a Grand Jury but only to affidavits to be filed. *Peats v. State* (1938), 213 Ind. 560, 12 N. E. (2d) 270.

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Furthermore, it has been held that a Prosecutor exercises a discretionary function in approving an affidavit and he cannot be required to approve an affidavit if he does not think that such action is warranted.

*State ex rel. Spencer v. Criminal Court of Marion County* (1938), 214 Ind. 551, 15 N. E. (2d) 1020;

*State ex rel. Freed v. Circuit Court of Martin County* (1938), 214 Ind. 152, 14 N. E. (2d) 910.

With these authorities in mind, an examination of Chapter 80 of the Acts of 1951, which contains substantially all of the laws about which you inquire, fails to show any provision which would tend to take this act out of the general rules heretofore stated.

Thus, to specifically answer your question, should a Prosecuting Attorney fail to approve an affidavit, your only recourse is to present the facts to the Grand Jury for any action that they may feel proper and it should be kept in mind that Grand Juries generally rely on the advice of Prosecuting Attorneys as to what action they should or may take under a given state of facts.

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### OFFICIAL OPINION NO. 71

November 24, 1952.

Mr. Joseph B. Minor,  
Attorney for Indiana State Toll  
Bridge Commission,  
1007 Citizens Bank Building,  
Evansville, Indiana.

Dear Sir:

I have your letter under date of November 22, 1952, in which you request an official opinion of the following:

“On or about the 29th day of September, 1952, the Indiana State Toll Bridge Commission in compliance with the Indiana State Toll Bridge Act, Section 36-