See also:

Thomas v. State, 196 Ind. 234, 236;
Faut v. State, 201 Ind. 322, 324, 325, 326.

No citation of authority is necessary to sustain the fact that persons engaged in interstate commerce are subject to the criminal laws of this state for crimes committed within the state, the same as anyone else, and therefore, a rule of criminal law applying to the driver of an intrastate vehicle would, in the same manner apply where the vehicle was operated in interstate commerce.

Investigation reveals that there is neither a federal statute nor regulation of the Interstate Commerce Commission which requires interstate trucks to be sealed or locked. Consequently, such sealing or locking is a measure taken by the owner or operator of the truck on his own initiative and could scarcely be held to thwart the legitimate actions of police officers.

Therefore, I am of the opinion that it would not be illegal for a State Police Officer to break a seal for further search and possible seizure under circumstances outlined in your inquiry.

HIGHWAY, STATE COMMISSION: Financial statements submitted by bidders may be examined by anyone who makes a showing of sufficient interest.

April 30, 1940.

Mr. M. R. Keefe,
Chief Engineer, State Highway Commission,
State House Annex,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in which you state, among other things, that from time to time the Department is asked to allow the inspection of financial statements furnished to the State Highway Commission of Indiana by contractors as a part of their application for prequalification for bidding as required by Chapter 98 of the Acts of 1937. (Acts of 1937, p. 469.)

This Act provides, among other things, that "any bidder desiring to submit to the State Highway Commission of Indiana a bid for the performance of any contract or contracts which the Commission proposes to let shall apply to the Commission for qualification and shall use for that purpose the forms prescribed and furnished by the Commission." Acts of 1937, p. 470.

The statute provides that printed forms for application for qualification and statements of prospective bidders are required to be made by the Commission and that these applications, statements and other forms which applicants for qualification may be required to use shall be furnished to any person on request. Acts of 1937, pp. 469, 470.

You state that a question has arisen as to whether the Commission is required to open these several applications to the inspection of persons desiring to inspect them and, in that connection, submit the following questions:

> "Can this information be considered as confidential and not falling under the head of public records, thereby giving the Commission the right of refusing to allow the inspection of these financial statements and other statements of experience of said contractor?
>
> "Does the State Highway Commission of Indiana have the authority to promulgate a regulation to the effect that these records are not subject to the inspection of the public?"

It is interesting to note that nowhere in the statute is anything said on the subject as to whether these applications are confidential. Neither is any language used in the statute making the applications public records, unless in the nature of the case they are public records. The language is quite clear, however, to the effect that in order to obtain a certificate of prequalification a contractor is required to apply to the Commission for the certificate, and in applying such contractor must use the forms prescribed and furnished by the Commission. They thus become a part of the files of the Commission. But that does not necessarily settle the question as to whether they are public records or not. As said by the Court in the case of People v. Harnett, 226 N. Y. S. 338 at p. 341:

> "It is not every document on file with a public officer, or every memorandum made by a public officer, that is a public document. Reports of private individuals to government officials, even pursuant to statute, correspondence of such officials in matters relating to private affairs of a citizen, although in connection with public business, or memoranda of public officers for their own convenience, are not public documents or records, unless made so by statute."

I think I should say in passing that these documents are not public records, strictly speaking. As said in the same case, from which I have already quoted on page 341:

> "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."

These applications, therefore, are not public records, strictly speaking; but, in a more general sense it seems to me that they are public documents. They are not simply the private correspondence carried on between a citizen and a department of government. They are applications made upon the forms prepared by a department of government pursuant to a public statute and become a part of the files of that department to support its action in either giving or refusing a certificate of prequalification. But see American District Telegraph Co. v. Woodbury, et al., 112 N. Y. S. at page 166.

With respect to such documents the Court said in the case of People v. Harnett, 226 N. Y. S. at page 342:

> "As to records and documents not strictly public records, but relating to public business, I do not think there is a right of inspection on the part of all citizens. Such a right would lead to inconvenience in the transaction of public business, and would ofttimes result in serious consequences to citizens and private business. It would be a startling proposition to public officers, and to the public as well, if they were informed that all citizens had the right, in the absence of statute

to the contrary, to search the files and records of all public officers, as it might suit their fancy.

"I take the rule to be in relation to such records and documents, although on file with a public officer pursuant to statute, that they ought not to be indiscriminately subject to inspection. However, any person who has an interest in such record or document should ordinarily be permitted to inspect it, unless its inspection would obviously be detrimental to public interest. The difficulty is to determine what constitutes a sufficient interest or an untimely and improper circumstance for inspection."

In the above case the records sought to be inspected were accident reports required to be filed by persons involved in automobile accidents and the person desiring the right of inspection claimed an interest by reason of the fact that a suit was pending by such person to recover damages on account of damages sustained in the particular accident. The Court in that case held that the interest was sufficient and a peremptory order of mandamus was issued commanding the Commissioner of Motor Vehicles to permit the petitioner or her duly authorized attorney to inspect the reports of the accident in question.

This case was affirmed without opinion by the Court of Appeals of New York, 164 N. E. 602. In this case the Commissioner had made the claim that the accident reports were not public records but were of a confidential nature. (See also American District Telegraph Co. v. Woodbury, et al., 112 N. Y. S. 165.)

In American District Telegraph Company, *supra,* the plaintiffs sought to restrain the State Board of Tax Commissioners from disclosing the reports made by the plaintiff under the tax law to the defendants for the purpose of enabling them to determine the value of the American District Telegraph Company's special franchises in order to assess the same. The Court said on page 166:

"These reports are required to be made under oath to the effect that the statements contained therein are true, and the board is authorized to prepare blanks to be used in making such reports, and a penalty is im-

posed for the failure to make them. The plaintiff insists that there is no warrant in law for making its reports public, and that to permit this to be done would work an irreparable injury in its business, and would be against public policy.

"The tax law itself does not contain any provisions either authorizing or prohibiting the publicity of any reports required to be made. There is no provision in the law that the reports shall be private or confidential, nor is there any provision that they shall be public or open to the inspection of anyone who desires to see them. The subject matter has not been covered in the statute in one way or another. * * *"

It will be noted that the situation in this case is not unlike the situation in the case of the question submitted by you. The Court continued:

"The fact is pointed out in the appellant's brief that several of the states have enacted statutes requiring reports of a kindred character to be kept private. While this may indicate the tendency of public sentiment in that direction, it also indicates that such states have deemed it necessary to enact laws to accomplish that result. This would also seem to be cogent argument that the plaintiff's grievances should be addressed to the Legislature, rather than to the courts, which possess no legislative power. No aid is furnished by the citation of decisions in other states in cases which have arisen there under the statutes referred to. The defendants are public officers, charged with important public duties, yet I cannot believe that the reports which are required to be made to them under the tax law are public records in the sense that documents which are required by law to be filed or recorded in public offices. They could, I think, properly exhibit these reports to anyone who could convince them that he had a legitimate interest in inspecting them. So, too, I think they could and should deny inspection of them to persons desiring to see them for the purpose of prying into the business secrets of a rival, or for idle curiosity, or for any other

improper purpose. The matter is left wholly within their control.

> "The statute being silent on the question, the defendants, who are responsible for the due administration of their office, may, in the exercise of a wise discretion, either withhold or permit the inspection or disclosure of these reports, depending upon whether they can be convinced that such inspection or disclosure is for a legitimate purpose or not. * * *"

The same general thought is expressed in the case of:

State ex rel. Romsa v. Grace, 5 Pac. 2d. 301.

See also:

State ex rel. Colscott v. King, Auditor, etc., 154 Ind. 621.

It seems to me upon the authority of the above cases that the question must be decided upon the basis as to whether the party desiring the inspection has such an interest as justifies it, because I do not think that the documents involved come within that class of documents as to which there is an absolute right of inspection by all citizens, irrespective of the motives or interest which they may have in the matter contained in the document.

As to just what interest should be shown in order to authorize the inspection of such documents, I find the rule stated in People v. Harnett, 226 N. Y. S. 338, at page 343, as follows:

> "A person has an interest in a record or document filed pursuant to statute, although not strictly public, sufficient to entitle him to an inspection, if it may be the basis of some official action or proceeding directly affecting him, or have a direct bearing upon his substantial rights."

I think the Commission has the right to promulgate a rule which would protect such records from inspection except by persons shown to have an interest therein and that the Commission would have the right to require a showing of interest before the inspection is permitted. If such an interest is shown, the right of the Commission to withhold the right of

inspection could not, in my opinion, be sustained except upon the basis that the grant of such right of inspection would be detrimental to the public interest. By this, I do not mean some slight inconvenience as such inspection would necessarily entail. Inconvenience ordinarily would not be sufficient unless it was such as materially burdened the public service.

With that in mind, I do not think the Commission would have the right to make and enforce an absolute rule denying the right of inspection of such documents to everyone irrespective of interest shown. But the Commission would undoubtedly have the right to fix the hours and days when such inspection could be made and to so limit the time to be consumed as to conserve the time of the Commission in the exercise of its public functions.

Your questions are answered accordingly.

PRINTING BOARD, STATE: Not entitled to additional compensation for services rendered as Clerk of State Board of Election Commissioners.

May 3, 1940.

Mr. Parke Beadle,
Clerk of the State Board of Election Commissioners
and Director of the Bureau of Public Printing,
Indianapolis, Indiana.

Dear Mr. Beadle:

I have your request of April 30, 1940, for an official opinion upon the following question as stated in your letter:

> "Is it the duty of the Auditor of State to draw a warrant payable to the Clerk of the State Board of Election Commissioners after the Board has voted unanimously to compensate the Clerk for personal services rendered?
>
> "A similar question was previously submitted to the Attorney General and opinion given, (James M. Ogden, page 937; Opinions 1929-1930) and since that time not only previous Clerks, but myself, have been remunerated."