1964 O. A. G.  

OFFICIAL OPINION NO. 58  

September 28, 1964

Hon. Lee Clingan  
R. R. #3, Elm Drive  
Covington, Indiana

Dear Senator Clingan:

I am replying to your letter of July 21, 1964, wherein you ask for my opinion concerning the following questions having to do with the Uniform Commercial Code, Acts 1963, Ch. 317, as found in Burns' (1964 Repl.), Section 19-1-101 et seq.:

"(1) Does a County Recorder have the right to deny a citizen of this state the opportunity to look at any record located in the Recorder's office including but not limiting financial statements filed under the provisions of the Uniform Commercial Code?

"(2) Is a financial statement as required under the Uniform Commercial Code a public record once the same has been filed in the office of the Recorder of a county located within the state?

"(3) Assuming that a person files a request with the County Recorder for a certificate of any presently effective financial statements and the County Recorder finds that there is none, is it not necessary that said County Recorder issue to the requesting party his signed certificate showing that there is no presently effective financial statement on file?

"(4) Assuming that since July 1 the County Recorder has made a charge of $1.00 to each person to look at the file on financial statements even though no certificate has been requested by the inquirer, and assuming further that your opinion holds that a citizen is permitted to look at these records without charge, then is said person who has been so erroneously charged entitled to a refund from the County Recorder?"
You set out in your letter various sections of the Acts of 1953, Ch. 115, found in Burns’ (1961 Repl.), Section 57-601 et seq.; this act is popularly known as the Hughes Anti-Secrecy Law. Because of this, I am assuming you wish to know what effect, if any, the Hughes Anti-Secrecy Law has upon the records filed in the recorder's office, particularly those records filed in connection with the Uniform Commercial Code.

Under the Uniform Commercial Code (hereinafter referred to as the “Code”) Burns’ 19-9-401 et seq., supra, county recorders are required to accept for filing various financial records such as financing statements, termination statements and so forth. Burns’ 19-9-407 (2), supra, provides:

“(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be one dollar [$1.00] plus fifty cents [50¢] for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing or other statement, security agreement or other supporting paper for a uniform fee of fifty cents [50¢] per page. If such request includes certification the filing officer shall charge a uniform fee of one dollar [$1.00] for each certificate.” (Our emphasis)

Under this section, interested persons are able to gain information necessary for the conduct of their business. Notwithstanding this provision of the Code, your first question is directed to the unlimited access to all documents, including those filed under the Code, by interested persons, without payment of fees.

In my opinion, the Legislature did not intend the records filed with county recorders to be available indiscriminantly to all persons. In the first instance, county recorders are
bound to protect the integrity of their records. This principle has been noted several times in decided cases of the Indiana Supreme Court. In fact recorders have been held liable on their bonds for failing to index recorded instruments properly.

Mechanics Bldg. Assn. v. Whitacre (1883), 92 Ind. 547;  
State ex rel. Lowry v. Davis (1888), 117 Ind. 307, 20 N. E. 159;  
Reeder v. State ex rel. Harlan (1884), 98 Ind. 114.

Obviously, the county recorder could not allow the records intrusted to him to be subject to the indiscriminate and uncontrolled access of the public and still insure their integrity. Nor did the Legislature intend such a result when they enacted the Hughes Anti-Secrecy Law.

"Public records" as used in the Hughes Anti-Secrecy Law, are defined in Burns' 57-602, supra:

"(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 sub-divisions."

This section must be read in pari materia with Burns' 57-601, supra:

"Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principal that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the state of Indiana that all of the citizens of this state are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those whom the people select to represent them as public officials and employees.

"To that end, the provisions of this act shall be liberally construed with the view of carrying out the above declaration of policy."
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 the statute or regulation requires a record in a "form necessary" to be in writing. Conceivably, under a very liberal construction of this definition, documents filed under the Code would be public records; however, the Hughes Anti-Secrecy Law is a penal statute, providing for fines and imprisonment for violation thereof. Consequently, a liberal construction is not permissible; on-the-contrary, a strict construction is required. Further the Legislature intended filings under the Code to be "public records," they would not have enacted the provision set out above in Burns' 19-9-407 (2), supra.

As noted in Burns' 57-601 and 57-602 (1), supra, set out above, the purpose of the Hughes Anti-Secrecy Law is to make available to members of the general public, public records containing information regarding the affairs of government and the official acts of officials and employees. However, the Legislature, by this statute, has not restricted itself from placing conditions upon the availability of such information. Burns' 19-9-407 (2), supra, is not an isolated example of the manner in which the Legislature has restricted or conditioned the availability of information found in the office of a public official to members of the general public by first requiring the payment of a fee. For example, in Acts 1945, Ch. 304, Sec. 8, as amended and found in Burns' 47-2408, the General Assembly requires the Bureau of Motor Vehicles to charge a fee before giving registration or title information to members of the public.

This is not to say that the public is to be denied access to the information in the archives of the county recorder; however, such access must be orderly and controlled so as not to thwart the purpose for which the records were filed with the recorder in the first place. Since the county recorder, and the county recorder alone, is responsible for keeping inviolate the records filed with him, only he can determine what procedures will be followed in his office to allow access to recorded instruments. The only provision for access provided by the Legislature in regard to the Uniform Commercial Code is that found in Burns' 19-9-407 (2), supra.
Therefore, in answer to your first and second questions, I am of the opinion that a county recorder has the right to control access to the records filed in his office and that while a financing statement filed pursuant to the Code may be a public record within the meaning of the Hughes Anti-Secrecy Act, the Legislature has in some respects limited the public's access to it.

In answer to your third question, it is my opinion that the county recorder is required to certify as to either the existence of or lack thereof of a presently effective financial statement in his files. Burns' 19-9-407 (2), supra, uses the language, "whether there is on file * * *." This language indicates that the recorder has an affirmative duty upon the request of an interested party and the payment of the prescribed fee to certify to such party whatever his records disclose. Under the Code, it is just as important for an interested person to know that no presently effective financial statement is on file as it is to know such an instrument is on file.

Since the answer to your first and second questions are in the negative, it is unnecessary to answer your fourth and final question.

OFFICIAL OPINION NO. 59

October 8, 1964

A. C. Offutt, M. D.
State Health Commissioner
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, Indiana

Dear Doctor Offutt:

This is in reply to your letter of September 15, 1964, wherein you ask the following questions:

"1. Does the State Board of Health have the authority to make grants to official local health departments from state appropriated funds in cooperation with the Federal Government?"
“2. Does the State Board of Health have the authority to make grants to voluntary, not-for-profit organizations from state funds in cooperation with the Federal Government?”

You state in your letter:

“Recently federal auditors of the Comptroller General’s office questioned the authority of the Indiana State Board of Health to make grants from state appropriated funds to other agencies. The auditors raise this question in relation to a rule in the Federal Grants Manual. The rule, HGM Part II-3-51.10(b), states, "* * * except as otherwise authorized by the Surgeon General, the provisions of state or local law which are applicable to the expenditure of money appropriated by the state or local subdivision shall apply respectively to federal monies paid to the state or to a political subdivision of the state as a cooperating agency * * *”

The answer to both of your questions is found in Acts 1947, Ch. 178, the same being Burns’ (1961 Repl.), Section 61-1301 et seq. This act concerns state co-operation with the Federal Government in the acceptance of benefits under various Acts of Congress. Burns’ 61-1301, supra, provides:

“The state, or any political subdivision thereof, are each hereby authorized and empowered to the full extent authorized by the Constitution of Indiana and not prohibited by law, to accept the provisions of any law of the Congress of the United States of America, or any rule, regulation, order or finding made pursuant thereto, now or hereafter in force, which, upon acceptance, authorizes the state, or any political subdivision thereof, to cooperate with the federal government, or to receive benefits for itself or any of its citizens and the state, or any political subdivision thereof, is hereby authorized and empowered to do any and all acts, and to make any rule, regulation, order, or finding, that may be necessary to cooperate with the federal government or to effectuate the purposes of any such federal law.”

320