

question number one, I feel it is appropriate to make the following comments. Burns' 49-1311, *supra*, permitted an allowance to the sheriff for house rent and fuel under certain circumstances. Under the terms of this statute, no contractual relationship existed between the sheriff and the county by the granting of this allowance, and there were no statutory restrictions on the expenditure of such allowance by the sheriff other, of course, than that it be expended for rent and fuel. Thus, any subsequent disposal of such allowance by the sheriff either by contracting with a third party for house rental or by renting his own home, would not have created a contract or agreement to which a county was a party and therefore would not have been within the terms of Burns' 10-3713, *supra*.

In summary, and in answer to your question number one, it is my opinion that the allowance for house rent and fuel for a sheriff as provided in Burns' 49-1311, *supra*, has been impliedly repealed and such payment is not authorized by the provisions of the County Officers Salary Act. In answer to your question number two, it is my opinion that any allowances made under said provisions of Burns' 49-1311, *supra*, and expended for the sheriff's own home, have not violated provisions of Burns' 10-3713, *supra*, which prohibits officers from being interested in public contracts.

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OFFICIAL OPINION NO. 64

November 30, 1961

Mr. Mark D. Miltenberger, Chairman  
Indiana Real Estate Commission  
1022 State Office Building  
Indianapolis 4, Indiana

Dear Mr. Miltenberger:

This is in response to your letter requesting an Official Opinion. Your specific question is stated as follows:

"Are the names and addresses of those persons who apply to take examinations for real estate broker or salesman licenses considered to be 'public records'?"

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within the meaning of Acts of 1953, Chapter 115, so as to be subject to inspection by any citizen as provided in said Act?"

The Acts of 1953, Ch. 115, is found in Burns' (1961 Temp. Noncum. Supp.), Section 57-601 *et seq.* Section 2 of said Act as found in Burns' 57-602, reads in part, as follows:

"(1) The term 'public records' shall mean any writing in any form necessary, under or required, or directed to be made by 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 as found in Burns' Section 57-603 gives the right of inspection of "public records" as above defined.

This definition of public records has been interpreted and construed by this office in 1953 O. A. G., page 94, No. 20, in 1953 O. A. G., page 208, No. 45 and in 1954 O. A. G., page 19, No. 7. The following language being used:

"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."

Thus, for any writing to be a "public record" there must be a statute or regulation requiring or directing the same to be kept.

Section 10 of the Real Estate License Law of Indiana, Acts of 1949, Ch. 44, as found in Burns' (1951 Repl.), Section 63-2410 provides as follows:

"Any person, desiring to act as a real estate broker or real estate salesman, must file an application for a license with the commission. The application shall be in such form and detail, as the commission shall prescribe, setting forth the following: (1) The name and address and age of the applicant or the name under which he intends to conduct business and, if the appli-

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cant be a partnership, the name and residence address of each member thereof and the name under which the partnership business is to be conducted; and if the applicant be a corporation, the name and address of each of its principal officers. (2) The place or places, including the city, town or village with the street and street number, if any, where the business is to be conducted. (3) Such other information as the commission shall require.”

The above statute therefore specifically requires the filing with the Real Estate Commission of a written application by each person desiring to act as a real estate broker or a real estate salesman.

Therefore, in my opinion, such written applications to take examinations for real estate broker or salesman licenses are “public records” within the meaning of the Acts of 1953, Ch. 115, Sec. 2, *supra*, and that by virtue of Section 3 of said Act, the right of inspection thereof is given to every citizen of this state during the regular business hours of the Commission including the right to make memoranda abstracts thereof. In your letter reference is made to your receipt of requests for *lists* of names and addresses of eligible applicants for examinations. A similar question as to the use of *lists* of names was considered by me in my 1954 O. A. G., page 19, No. 7. My conclusions therein are equally applicable in the instant case. Therefore, it is my further opinion, that the *lists* of names and addresses of such eligible applicants are not “public records,” but are compilations made for the benefit of the Real Estate Commission. Such *lists* not being “public records,” it is discretionary with the Commission as to the administrative use made of such *lists*.