

Kentucky

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF KENTUCKY

OAG 82-149

March 12, 1982

REQUEST BY:

Mr. James A. Nelson
State Librarian and Commissioner
Department of Library and Archives
P.O. Box 537
Frankfort, Kentucky 40602

OPINION BY:

Steven L. Beshear, Attorney General; By: Carl Miller, Assistant Attorney General

OPINION:

You have requested that we clarify OAG 81-159 in which we said that a public library is not required to make available for public inspection its registration and circulation records. We said: "We think that the individual's privacy right as to what he borrows from a public library (books, motion picture film, periodicals and any other matter) is overwhelming." This conclusion was based on KRS 61.878 (1)(a) which exempts from the mandatory requirement of public disclosure "public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

In your recent letter you explain that librarians divide libraries into four basic types: school, public, academic and special. You ask if our opinion applies to a school library, such as a state university, and the state library.

Our opinion applies to any library which is subject to the Open Records Law as defined by KRS 61.870. This [*2] includes all tax supported libraries and all private libraries which receive as much as 25 percent of their funds from state or local authority. It does not include, of course, a private library receiving less than 25 percent of its funds from state or local authority. Our opinion, in effect, places tax supported libraries in the same position as private libraries which would not be governed by the Open Records Law. In other words, all libraries may refuse to disclose for public inspection their circulation records. As far as the Open Records Law is concerned, they may also make the records open if they so choose; however, we believe that the privacy rights which are inherent in a democratic society should constrain all libraries to keep their circulation lists confidential.

We have heard it suggested that in the case of a state university a professor might have the legitimate right to check the circulation record to see if a student has checked out a particular book and committed plagiarism by submitting verbatim material from the book on an assignment of an original composition. We cannot give an opinion on such a question because it is outside of the scope of the Open Records [*3] Law.

The main thrust of OAG 81-159 and of this opinion is that no person can demand as a matter of right to inspect the circulation records of any type of library -- school, public, academic or special -- under the Open Records Law.

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF KENTUCKY

OAG 81-159

April 21, 1981

Kentucky

REQUEST BY:

James A. Nelson
State Librarian
Department of Library and Archives
Frankfort, Kentucky 40601

OPINION BY:

Steven L. Beshear, Attorney General; Carl Miller, Assistant Attorney General

OPINION:

You have requested an opinion of the Attorney General as to whether registration and circulation records of public libraries are mandatorily required to be open to the public under the Open Records Law, KRS 61.870-61.884.

It is our opinion that they are not.

KRS 61.878(1)(a) reads as follows:

"The following public records are excluded from the application of KRS 61.870-61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction:

(a) public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. . ."

The wording of this statute calls for a weighing of an individual's right of privacy against the public interest in the transaction involved. *Wine Hobbies U.S.A., Inc. v. U.S. Internal Revenue Service, 502 F.2d 133 (1974)*.

We think that the individual's privacy rights as to what he borrows from a public library (books, motion picture film, periodicals and any other matter) is overwhelming. In fact we can see no public interest at all to put in the scales opposite the privacy rights of the individual.

We would point out, however, that Kentucky has no privacy statute and that the exceptions to mandatory disclosure of public records are permissive and no law is violated if they are not observed by the custodian.

In summary, it is our opinion that the custodian of the registration and circulation records of a public library is not required to make such records available for public inspection under the Open Records Law.