

school to include a driver education course in its curriculum. Further, a person under 18 years of age may not obtain an operator's license unless he or she successfully passes a driver education course. Driver education courses must be offered by public school districts and the persons enrolled in such courses must be evaluated in terms of passing or failing as a condition precedent to obtaining an operator's license prior to attaining age 18.

Therefore, it follows that driver education courses are, under Michigan law, an essential part of a system of free public schools. Accordingly, it is my opinion that if Senate Bill No. 1121, allowing public school districts to charge a fee to driver education students, were enacted into law, such legislation would violate Const 1963, art 8, § 2.

FRANK J. KELLEY,
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761011.1

RECORDS AND RECORDATION: Public access to list of registered voters.

WORDS AND PHRASES: "Public records".

The voter list in the possession of a county clerk and a jury board are public records subject to public inspection.

The right to inspect public records does not mean that public officials are obligated to furnish copies of the record although they may do so if they wish.

Opinion No. 5107

October 11, 1976.

Honorable Connie Binsfeld
State House of Representatives
Capitol Building
Lansing, Michigan

You have requested an opinion on behalf of the jury board of Grand Traverse County, regarding the right of public access to a list of registered voters kept by the board. This list is used in the selection of a jury list.

A review of the law of the State leads to the conclusion that a definite policy of openness and disclosure of public records exists. This policy has existed since the time of *Burton v Tuite*, 78 Mich 363, 375-376; 44 NW 282, 285 (1889), in which the court stated:

" . . . It is plain . . . that the legislature intended to assert the right of all citizens, in the pursuit of a lawful business, to make such examinations of the public records in public offices as the necessity of their business might require, subject to such rules and restrictions as are reasonable and proper under the circumstances. . . ." (p 375)

The initial inquiry to be made concerns the question of what records are considered to be public records. As noted in 1 OAG, 1957-1958, No 2969, p 147 (April 2, 1957), records which are deemed to be public records

are those specified in 1913 PA 271, § 5; MCLA 399.5; MSA 15.1805. In pertinent part, this section provides as follows:

"Any record that is required to be kept by a public officer in the discharge of the duties imposed on him by law, or that is a writing required to be filed in a public office, or is a written memorial of a transaction of a public officer made in the discharge of his duty, shall be the property of the people of the state. . . ."

The RJA, § 1310; MCLA 600.1310; MSA 27A.1310, provides in pertinent part:

"(1) The township or city clerk shall annually between April 15 and May 1 deliver to and file with the county clerk a full, current and accurate copy of the voter registration cards containing the names and addresses of the registered voters. In lieu of a copy of the registration card a full, current and accurate list of those registered together with the current addresses shown on the card may be filed.

"(2) The [jury] board shall secure from the county clerk, and the county clerk shall provide, copies of the current voter registration cards or the current voter registration lists for each precinct in the county. The board shall treat the cards and lists as 1 list, with voters grouped either by precinct or by city, township or village as they may be provided."

"* * *"

There can be no question, therefore, that the several lists filed by the township and city clerks with the county clerk, and that the single list compiled by the jury board from these several lists, are both public records. In both instances, the records are arranged and kept by a public body carrying out a statutory public function.

The Michigan Supreme Court has long recognized a common law right of public inspection of public records. In *Nowack v Auditor General*, 243 Mich 200, 209; 219 NW 749, 752 (1928), the Court said:

"It is the plain duty of the Auditor General to exhibit his official records to any citizen of Michigan who desires to inspect them for any proper and lawful purpose in circumstances not detrimental to the public business."

In *Booth Newspapers, Inc v Muskegon Probate Judge*, 15 Mich App 203, 207; 166 NW2d 546, 548 (1968), the newspaper sought to compel a probate judge to afford access to a last will and testament. Noting the broad accessibility to public records allowed under the *Nowack* decision, *supra*, the Court enumerated possible restrictions upon this access saying:

"First, the legislature, for its own reasons, may specifically define and limit 'persons interested' to a certain class, also intending that such definition be uniform throughout the code. It may also foresee certain governmental burdens and so restrict access by providing definitions of 'public' as opposed to 'private' records. Finally, the courts may determine that the legislature intended to restrict access in cases where harm to the public interest may be said to outweigh the right of mem-

bers of the public to have access, or where the purpose for which the information will be used is stated to be unlawful, or where reputations may be harmed, or for pastime, whim or fancy. In such cases, a balancing of the public interest with the right of access must be made. The only harm to the public interest which could occur here would be if we would deny access to the newspaper."

There is no legislative enactment requiring that the voter list compiled by the jury board be confidential. On the contrary, the law encourages the disclosure of this information. 1954 PA 116, § 516; MCLA 168.516; MSA 6.1516, provides for public access to voter registration records stating:

"The registration record shall be open for public inspection under rules and regulations prescribed by the clerk."

In conclusion, it is my opinion that the voter lists in the possession of the county clerk and the jury board are public records.

The fact that members of the public have a right to inspect these records does not mean, however, that public officials are obligated to furnish copies, although they may do so if they wish; it means only that the public has a right of access and may look at the records at a reasonable time without interfering with the conduct of public business. See *Burton Abstract & Title Co v Martin*, 38 Mich App 178; 196-NW2d 23 (1972).

FRANK J. KELLEY,
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ADMINISTRATIVE LAW AND PROCEDURES: Adoption of administrative rules on public access to records.

RECORDS AND RECORDATION: Adoption of administrative rules on public access to records.

MEDICAL PRACTICE BOARD: Duty to promulgate administrative rules.

The Medical Practice Board has both the authority and the duty to promulgate rules concerning public access to its records.

Opinion No. 5062

October 13, 1976.

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You have asked whether the Medical Practice Act, 1973 PA 185, MCLA 338.1801 *et seq*; MSA 14.542(1) *et seq*, § 3(6), prohibits the Medical Practice Board from promulgating administrative rules regarding public access to records generated pursuant to said Act.

1973 PA 185, § 3(6), *supra*, provides in pertinent part as follows:

"The department shall have charge of the offices of the board and