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Honorable Kenneth Cory
Assembly Chamber

Right of Privacy--Public Records
(A.C.A. 51) #13370

Dear Mr. Cory:

You have asked us two questions with regard to automobile registration records of the Department of Motor Vehicles, which we have separately stated and considered below.

QUESTION NO. 1

Are records of the Department of Motor Vehicles relating to automobile registration public records?

OPINION NO. 1

It is our opinion that the records of the Department of Motor Vehicles relating to automobile registration are public records.

ANALYSIS NO. 1

The provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code*) relate generally to the public's right of access to information concerning the people's business.

* All section references are to the Government Code, unless otherwise indicated.

Sections 6252, 6253, 6254, 6255, 6256, and 6257 of the act provide, in pertinent part, as follows:

"6252. As used in this chapter:

"(a) 'State agency' means every state office, officer, department, division, bureau, board, and commission or other state agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

* * *

"(c) 'Person' includes any natural person, corporation, partnership, firm, or association.

"(d) 'Public records' includes all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."
(Emphasis added.)

"6253. Public records are open to inspection at all times during the office hours of the state or local agency and every citizen has a right to inspect any public record, except as hereafter provided. Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section." (Emphasis added.)

"6254. Nothing in this chapter shall be construed to require disclosure of records that are:

"(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure;

"(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, until such litigation or claim has been finally adjudicated or otherwise settled:

"(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;

"(d) Trade secrets;

"(e) Geological and geophysical data, plant production data and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person;

"(f) Records of complaints to or investigations conducted by or records of intelligence information or security procedures of the office of the Attorney General and Department of Justice, and any state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes;

"(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;

* * *

"(k) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

* * *

"Nothing in this section is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law."
(Emphasis added.)

"6255. The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

"6256. Any person may receive a copy of any identifiable public record or shall be provided with a copy of all information contained therein. Computer data shall be provided in a form determined by the agency." (Emphasis added.)

"6257. A request for a copy of an identifiable public record or information produced therefrom, or a certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, or the prescribed statutory fee, where applicable."

We think that it is clear that the above provisions of the California Public Records Act are applicable to the records of the Department of Motor Vehicles, relating to automobile registration and that such records come within the definition of the term "public records" as contained in Section 6252.

QUESTION NO. 2

Would Assembly Constitutional Amendment No. 51, as amended in Assembly June 8, 1972, if adopted by the people, affect the "public records" status of records relating to automobile registration?

OPINION AND ANALYSIS NO. 2

A.C.A. 51 as amended in Senate June 8, 1972, would, if adopted, amend Section 1 of Article I of the California Constitution to provide as follows:

"Section 1. All men people are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety, and happiness, and privacy."

Thus, the proposal would include pursuing and obtaining privacy among the inalienable rights guaranteed by the California Constitution.

Initially, we point out that the rights presently guaranteed by Section 1 of Article I have been defined and restricted by the Legislature (see for example Sec. 1000 et seq., Civ. C.; Sec. 447 et seq., Pen. C.). In this connection inasmuch as courts will give great weight to legislative interpretation of constitutional provisions (Woodcock v. Dick, 36 Cal. 2d 146, 148) we think that the effect of the proposal in question would be substantially influenced by any such legislative action.

The right of privacy is recognized under present California case law, and has been defined as the right to live one's life in seclusion, without being subjected to unwarranted and undesired publicity (Gill v. Curtis Publishing Co., 38 Cal. 2d 273, 276). In short it is the right to be let alone (Kerby v. Roach Studios, Inc., 53 Cal. App. 2d 207). It has also been held, however, that such right is not absolute (see Metter v. Los Angeles Examiner, 35 Cal. App. 2d 304, 312; Voneye v. Turner, 240 S.W. 2d 588, 590).

The court in the case of Melvin v. Reid, 112 Cal. App. 285, at page 290 summarized the law in this regard, as follows:

"A few general principles, founded on authority or reason, seem to run through most of the better considered decisions from the jurisdictions which recognize the doctrine as well as those which do not. We may summarize them as follows:

"1. The right of privacy was unknown to the ancient common law.

"2. It is an incident of the person and not of property--a tort for which a right of recovery is given in some jurisdictions.

"3. It is a purely personal action and does not survive, but dies with the person.

"4. It does not exist where the person has published the matter complained of, or consented thereto.

"5. It does not exist where a person has become so prominent that by his very prominence he has dedicated his life to the public and thereby waives his right to privacy. There can be no privacy in that which is already public.

"6. It does not exist in the dissemination of news and news events, nor in the discussion of events of the life of a person in whom the public has a rightful interest, nor where the information would be of public benefit as in the case of a candidate for public office.

"7. The right of privacy can only be violated by printings, writings, pictures or other permanent publications or reproductions, and not by word of mouth.

"8. The right of action accrues when the publication is made for gain or profit. (This however is questioned in some cases.)"

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While we do not think it possible to predict with absolute certainty the effect with regard to any given situation of the amendment of Section 1 of Article I of the California Constitution to expressly state that the pursuit and obtainance of privacy is among the inalienable rights guaranteed thereby, we think the existing case law on the subject is persuasive.

In this connection, with respect to the right of privacy recognized under existing law, that in order for there to be a violation of the right of privacy the thing into which there is prying or intrusion must be entitled to be private (see People v. Blair, 2 Cal. App. 3d 249; Vollker v. Tyndall, 75 N.E. 2d 548).

Accordingly, in light of this principle, we do not think that A.C.A. 51, if adopted by the people, would be held to circumscribe the disclosure of material, such as information relating to automobile registration that by law becomes a part of public records where such disclosure is regulated by statute.

Very truly yours,

George H. Murphy
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BY

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MR:rt

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