

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. MV. 86-232

TAXPAYER'S DEFENSE FUND,

§

Taxpayer.

§

ORDER

By letter dated August 7, 1986, Mr. Earl L. Dansby, on behalf of the Taxpayer's Defense Fund (Petitioner), requested a hearing with the Revenue Department under the provisions of Code of Alabama 1975, §32-8-4. The matter in dispute is the Petitioner's right to request, view and copy certain specific motor vehicle registration records, and the Department's right to charge a reasonable fee for services rendered in producing such records. The hearing was conducted by the Department's Administrative Law Judge on September 4, 1986. Mr. Dansby was present and represented the Petitioner. Revenue Department assistant counsel John J. Breckenridge represented the Department. Based on the uncontroverted evidence presented at the hearing, and in consideration of the arguments and authorities presented by both parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

On several occasions, the Petitioner has sought to view, and sometime copy, certain specific motor vehicle registration records maintained by the Revenue Department. There is no question that in every case the Department has been cooperative and has provided

the information sought within a reasonable time. However, in each case the Department has required payment of a \$3.00 fee, regardless of whether the Petitioner only inspected the records or also requested that a copy be made by the Department. The Petitioner does not object to the \$3.00 fee if a copy is provided, but does object if it only views the records and does not request a copy.

The \$3.00 fee is a uniform fee charged in advance to all parties requesting to view the Department's motor vehicle registration records. The fee was imposed as directed by Commissioner James C. White, Sr. in a letter dated March 2, 1984 so as to offset the cost of employee time, photocopy and computer usage and other expenses incurred by the Department in providing the requested records. To provide the records it is necessary that a Department employee must use the Department's computer system to locate the information sought and then, if necessary, retrieve a hard copy of the record from the Department's files.

The Department maintains that the records in question are confidential under the provisions of Code of Alabama 1975, §40-1-33, but that such records can be made available to the public upon order of the Commissioner of Revenue. After balancing the confidential nature of the records with the public's right to open access to information of public concern, the Commissioner has determined that the records should be made available for reasonable inspection, with the stipulation, as stated, that a \$3.00 fee

should be collected to offset the cost of a record search.

The Petitioner contends that the records in question are public records, and are not confidential under §40-1-33, and that it has a right to view and inspect such records without charge.

#### CONCLUSIONS OF LAW

The initial issue raised by both parties is whether the records in issue are confidential under §40-1-33. That section provides in pertinent part as follows:

All tax returns, financial statements and information secured by the department of revenue officials or employees thereof for the purpose of arriving at the amount of ad valorem, franchise, income or license tax shall be kept under lock and key by the department of revenue . . . except for the purpose of properly administering the tax laws of this state or upon order of the commissioner of the department of revenue. . .

The Petitioner argues that the above section does not apply because the records in question do not involve a license tax. However, the motor vehicle records sought are titled "Motor Vehicle Registration Tag and Tax Receipt", and sets out the amount of license tax and registration fee levied against the subject vehicle and owner. Thus, the records do contain license tax information and are accordingly subject to the confidentiality provisions of §40-1-33. Nevertheless, the confidentiality of the records has been made moot by the Commissioner of Revenue's decision, as authorized by the statute, to make the records available for public inspection.

The determinative question is whether the Department can

charge a reasonable fee to offset the expenses incurred in searching its records and in providing a copy, if requested, of a motor vehicle registration record. There is no statute directly authorizing a fee. However, there is evidence to indicate that other state agencies, for example the Departments of Public Safety and Public Health and the Bureau of Vital Statistics, among others, as well as various elected officials, such as the probate judge of each county, do charge a fee ranging from \$2.00 to \$5.00 for searching its records and furnishing a copy of public documents.

The Department is also specifically authorized to charge various nominal fees for issuing documents and providing information concerning motor vehicle titles, Code of Alabama 1975, §32-8-6.

Generally, in the absence of a governing statute, persons entitled to inspect public records may do so without charge. The exception is where assistance in searching the records and making copies is provided by the officer in possession of the records. Under such circumstances a reasonable fee can be charged. Atlanta Title and Trust Company v. Tidwell, 160 S.E. 620; see generally, Records, 76 C.J.S., at page 146.

In the present case, the Commissioner of Revenue and his agents are under a duty to keep and preserve all records of the Department. With such a duty, the Commissioner has the responsibility of taking reasonable precautions to protect the records against alteration, injury or destruction. See generally,

Records, 76 C.J.S., at page 132. Given the volume of records involved and the need that they be kept in an accurate and secure manner, it is reasonable that the public should not have direct access to the Department's computer system and files, but rather, so as to protect the integrity of the system, it should be necessary that a Department employee lend assistance in providing whatever information requested. It is also reasonable that the Department should be allowed to charge a reasonable fee of \$3.00 for such assistance so as to offset the various costs involved. For recent opinions of the Attorney General in support of the above conclusion, see opinion to Hon. J. L. Moore, Probate Judge, Mobile County, dated May 9, 1978, opinion to Mrs. Rebecca Beasley, Commissioner of Alabama Medicaid Agency, dated August 25, 1981, and opinion to Hon. L. W. Noonan, Probate Judge, Mobile County, dated August 30, 1984.

In consideration of the above, it is hereby found that the Department of Revenue acted properly and within its authority in charging a reasonable fee of \$3.00 for the service of researching and providing motor vehicle registration information to the Petitioner, as well as any other requesting party.

Done this 11th day of September, 1986.

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BILL THOMPSON  
Chief Administrative Law Judge