

10-1-1954

Municipal Corporations—Right to Inspect Public Records

Rudolph F. DeFazio

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [State and Local Government Law Commons](#)

Recommended Citation

Rudolph F. DeFazio, *Municipal Corporations—Right to Inspect Public Records*, 4 Buff. L. Rev. 100 (1954).
Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol4/iss1/50>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

the property.⁹ A zoning ordinance cannot deprive an owner from using his land in a manner for which it was reasonably adapted,¹⁰ for if a regulation goes too far in restricting the use of land it will be regarded as a taking of property.¹¹

This past term a property owner asked for a declaratory judgment declaring a zoning ordinance affecting his property invalid.¹² The tract of land is located in the center of a highly developed business district. The property had been reclassified from a business district to a residential district, and the public's parking their automobiles on the property was allowed as a nonconforming use. The petitioner, having purchased the land, applied for and was refused a variance to allow him to construct a shopping center. After joinder of issue, the property was again reclassified as a Designed Parking District, which prohibited the use of the property for any purpose except for the parking of automobiles and a service station, which was already on the land.

The court held the zoning ordinances unreasonable and arbitrary so as to result in an invasion of property rights and therefore invalid. The court noted that the purchase of property with the knowledge of the restrictions on it does not prevent the purchaser from contesting their validity, and the application for a variance, which assumes the validity of the ordinance, does not prevent a subsequent attack upon its validity.¹³

Right to Inspect Public Records

Section 51 of the General Corporation Law, which establishes the procedure for the prosecution of public officials for illegal acts also declares that all records of local governmental units are public records open to inspection by a taxpayer. Sections 893 and 894 of the Greater New York Charter stipulate that the right of inspection shall not apply to certain specified records, including papers prepared for use in any investigation authorized by the charter. Under the charter, there is created a Commission of Investigation which is empowered to make investigations as directed by the Mayor or Council,¹⁴ and to report the results to them.¹⁵

9. *Id.* § 25.40.

10. *Id.* § 25.45; *Dowsey v. Village of Kensington*, 257 N. Y. 221, 177 N. E. 427 (1931).

11. *Id.* § 25.43; *Pennsylvania Coal Co. v. Mahon*, 206 U. S. 393 (1922).

12. *Vernon Park Realty v. City of Mount Vernon*, 307 N. Y. 493, 121 N. E. 2d 517 (1954).

13. See *Arverne Bay Construction Co. v. Thatcher*, 278 N. Y. 222, 15 N. E. 2d 587 (1938).

14. NEW YORK CITY CHARTER § 803.

15. NEW YORK CITY ADMINISTRATIVE CODE § 803-1.0.

THE COURT OF APPEALS, 1953 TERM

There is no question that a taxpayer has the right to examine the books, records and reports of the departments of water, gas and electricity,¹⁶ or building contracts and the bidding involved therein.¹⁷ However, generally courts in the United States have held legislation forbidding the divulgence or disclosure of information, reports and records valid,¹⁸ and it is a fairly basic concept that public policy demands that certain records be kept secret.¹⁹ New York courts have recognized the validity of statutes making public relief records confidential,²⁰ and restricting the right of inspection of health records.²¹ A holding of the Appellate Division recognized the right of secrecy where disclosure would prevent the realization of the full benefits of a department's purpose and not serve the public interest.²²

Recognizing the necessity of secrecy in an investigation, the court in a recent case, in which a taxpayer of the City of New York applied for an order to compel the Mayor to allow her to inspect a report submitted to him by the Commissioner of Investigations, upheld the provisions restricting the right of inspection and granted a motion to dismiss.²³

Status of a School Teacher

In *Daniman v. Board of Education of City of N. Y.*,²⁴ the Court of Appeals affirmed (4-3) the Appellate Division in holding that teachers are city employees, although intrinsically public education is a state function.²⁵ Petitioners' employment in the public schools and colleges of the City of New York had been terminated under the provisions of the city charter for refusing to answer questions concerning their Communist affiliations before a Senate Judiciary subcommittee. The statute provides that if an officer or employee of the *city* shall refuse to answer questions on the grounds that his answer would tend to incriminate him, his tenure of employment shall terminate.²⁶

16. *Matter of Ihrig v. Williams*, 181 App. Div. 865, 196 N. Y. Supp. 273 (1st Dep't), *aff'd* 223 N. Y. 670, 119 N. E. 1050 (1918).

17. *Matter of Egan v. Board of Water of the City of New York*, 205 N. Y. 147, 98 N. E. 467 (1912).

18. See Annotation 165 A. L. R. 1306.

19. 5 McQUILLAN, MUNICIPAL CORPORATIONS § 14.14 (3d ed. 1949).

20. *Coopersburg v. Taylor*, 148 Misc. 824, 266 N. Y. Supp. 359 (Sup. Ct. 1933).

21. *Matter of Allen*, 205 N. Y. 158, 98 N. E. 470 (1912).

22. *People ex rel. Woodill v. Fosdick*, 141 App. Div. 450, 126 N. Y. Supp. 252 (1st Dep't 1910).

23. *Cherkis v. Impelliteri*, 307 N. Y. 132, 120 N. E. 2d 530 (1954).

24. 306 N. Y. 532, 119 N. E. 2d 373 (1954).

25. N. Y. CONSTITUTION Art. XI, § 1.

26. NEW YORK CITY CHARTER § 903.