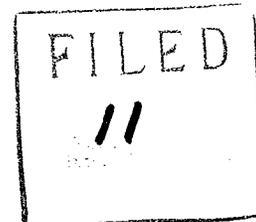


PUBLIC RECORDS:  
STATE RECORDS:

The authority of the Director of the State Records Commission under the State Records Law in microfilming records is limited to microfilming records which are to be stored or preserved and it does not apply to microfilming records used currently by state agencies.

OPINION NO. 11

January 12, 1970



Mr. James C. Kirkpatrick  
Secretary of State  
State of Missouri  
Capitol Building  
Jefferson City, Missouri 65101

Dear Mr. Kirkpatrick:

This is in response to your request for an opinion from this office as follows:

"The state records act of 1965 gives to the Director of the Records Management and Archives Services, in this department, the authority to evaluate economies of microfilming projects and to operate microfilming services for agencies. 'Agencies' are defined in the act as any 'department, office, commission, board or other unit.'

"We offered central microfilming facilities to the Highway Department last August, but the department is now proceeding to purchase and install its own complete microfilming equipment.

"Respectfully request your official opinion on this matter. Does the state records act apply to the Highway Department."

Honorable James C. Kirkpatrick

Your request requires an interpretation of the State Records Law, Section 109.200 to 109.310 RSMo Supp. 1967. The cardinal rule in construing statutes is to ascertain the intention of the legislature from the ordinary meaning of the words used considering the whole act and its legislative history and seek to promote the purposes and objects of the statute and avoid any strained or absurd meaning. *St. Louis Southwestern Ry. Co. v. State Tax Com'n*, 319 S.W.2d 559. In arriving at the intention of the legislature, the title of the act is essentially a part of the act and is itself an active expression of general scope of the bill, and therefore, it may be looked to as an aid in arriving at the intention of the legislature. *Hurley v. Eidson*, 258 S.W.2d 607.

State Records Law was enacted by the Seventy-Third General Assembly by House Bill 294, Laws of Mo. 1965 page 233. The title of the act is as follows:

"AN ACT relating to state records, their definition, establishing a records management and archival service for their efficient and economical management and preservation; creating a state records commission to facilitate records evaluation and timely disposition; and providing for a continuing records and paperwork management program, and repealing inconsistent provisions, with an emergency clause."

Section 109.220, RSMo Supp. 1967, provides for the Secretary of State to establish and administer a "records management and archival service" for the efficient and economical application of management methods for the creation, utilization, maintenance, retention, preservation and disposal of official records with an annual report to the legislature and governor with recommendations for improvements and additional economies in the management of state government. It further authorizes the Secretary of State to appoint a director who is qualified in records management and archives practices and techniques.

Section 109.230, RSMo Supp. 1967, provides:

"The director shall, with due regard for the functions of the agencies concerned, and subject to the approval of the secretary of state:

- (1) Establish standards, procedures, and

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techniques for effective management of records;

(2) Make continuing surveys of paperwork operations and recommend improvements in current records management practices including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing records;

(3) With approval of the state records commission, establish standards for the preparation of schedules which provide for the retention of state records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, legal, historical or fiscal value to warrant their further keeping;

(4) Publish lists of records authorized for disposal or retention;

(5) Supervise the state records center and archives;

(6) Establish standards and formulate procedures for the transfer, safeguarding and servicing of records;

(7) Evaluate economies of microfilming projects and operate microfilming services for agencies;

(8) Obtain reports from agencies as required for the administration of the program; and

(9) Serve as secretary to the state records commission."

Section 109.240, RSMo Supp. 1967, requires each agency to establish and maintain a continuing program for economical and efficient management and to make and master records sufficient to protect the legal and financial rights of the state. It further requires each agency to submit to the Chairman of the State Records Commission a schedule proposing the length of time each state record should be retained for administrative, legal, historic or fiscal

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purposes and a list of state records that are not needed in transacting current business and do not warrant further keeping.

Section 109.260, RSMo Supp. 1967, provides that no record should be destroyed or otherwise disposed of by a state agency unless the Commission first determines it has no further administrative, legal, research or historic value.

Section 109.280 Mo. Supp. provides:

"Nothing in sections 109.200 to 109.310 shall be construed to divest agency heads of the authority to determine the nature and form of the records required in the administration of their several departments, or to compel the removal of records deemed necessary by them in the performance of their statutory duties. Any records made confidential by law shall be so treated in the state records center and archives."

The above statute states that the state records law does not take authority away from the agency head to determine the nature and form of the records required by the agency as necessary in the administration of their department.

Applying the cardinal rule of statutes construction in arriving at the intention of the legislature from the words used and considering the act as a whole, we believe it was intended that these statutes should be applied to the storage of state records that are no longer actually used and which should be preserved for future use or historical value. We believe the primary purpose of the act as expressed in the title was to establish an efficient and economical method for the disposal or preservation of state records giving the director, with the approval of the state records commission, authority to determine the records which have no further administrative, legal, fiscal, research, or historic value and which should be destroyed, from those which are to be preserved for future use. It is our view that the Commission has authority to determine whether the original records are to be stored or microfilmed for preservation by the director, subject to the approval of the Secretary of State. We believe the legislature intended to give the director, with the approval of the Commission and Secretary of State, authority to assist and suggest procedures for record keeping and other procedures in office management but this authority is only advisory and the ultimate determination of the records that are to be main-

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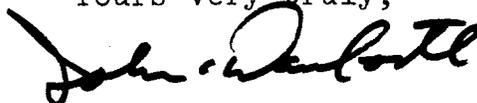
tained for current use, and the manner of keeping those records is with the agency. The provision in the statute authorizing the director, with the approval of the Secretary of State, to evaluate economies of microfilming services for agencies applies only to the storage or microfilming of records for storage and it has no application to microfilming of records by agencies for current use in the performance of its duties.

#### CONCLUSION

It is the opinion of this office that the authority of the Director of the State Records Commission under the State Records Law in microfilming records is limited to microfilming records which are to be stored or preserved, and it does not apply to microfilming records used currently by state agencies.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH  
Attorney General