

EVIDENCE: Evidence of incorporation may be proved by parole evidence where original records are destroyed.

11-14
November 13, 1935.



Honorable William Barton
Jonesburg, Missouri

Dear Sir:

This Department is in receipt of your letter of November 1, requesting an opinion as to the following state of facts:

"Where all records of incorporation of a town have been destroyed in the Recorder's office and County Clerk's office where they were recorded, is it necessary to reincorporate such town under the laws set out in Revised Statutes 1929, so as to be in a position to enforce its ordinances and collect its taxes, where such proof of its incorporation as above indicated has been destroyed and other records indicating such incorporation, especially where the question might arise that such town was not properly incorporated?"

As you might recall or have learned, the Montgomery County Records were burned at one time, and the towns in this county are often placed in an embarrassing situation."

In 22 Corpus Juris, page 1029, the general rule is stated as follows:

"In respect to secondary evidence of their contents when the originals are lost or destroyed, public records do not differ from private documents; so where it is satisfactorily shown that public records have been lost or destroyed, their contents may be proved by parcel or other competent secondary

evidence, provided that the existence of other and better evidence is not disclosed by the circumstances of the case or the character of the evidence introduced.

Accordingly, the courts have admitted secondary evidence with respect to the contents of land office records; school district records; the record of an organization of a plantation for election purposes, a record of an ancient grant from proprietors of a town, or the minutes of a municipal corporation; and have received such evidence to show the incorporation of a town, the qualification of a public officer; the proceedings of county commissioners; the sale of public lands; the establishment of a public road; the location of a railroad; or the provisions of a municipal ordinance."

In the case of Parry vs. Walser, 57 Missouri 169, 1. c. 172, the Court said:

"We think that the court improperly excluded the parol evidence to establish the existence and contents of the lost or destroyed record of the judgment. The general rule is, that if a record is lost, its contents may be proved like any other document, and the evidence given in this case, preliminary to the proof of the contents of the record, was sufficient to prove its destruction. In fact, the evidence seems to be almost conclusive on that subject. (Fouk vs. Colburn, 48 Mo. 225; 1 Green). Ev., Sec. 84, p. 509, and cases there cited; Newcomb vs. Drummond, 4 Leigh, 57.)."

In the case of The Inhabitants of Stockbridge vs. The Inhabitants of West-Stockbridge, 12 Mass. 400, a similar question was before the Court. In that case the Court said:

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"But the act of incorporation is not to be found, nor can any record relating to it be discovered in the secretary's office. From the facts, however, the presumption is violent, that the town has been regularly incorporated, and that the record has been in some way lost or destroyed. The existence of the record is also proved by the deposition in question (a); and it cannot be doubted, that parole evidence is competent to prove the existence and loss of a record. This, then, being satisfactorily proved, secondary evidence of the incorporation of the town is clearly admissible by the rules of evidence (b).

CONCLUSION.

In view of the foregoing it is the opinion of this Department that secondary evidence may be admitted to prove the incorporation of a municipal corporation where the original records have been destroyed.

Respectfully submitted,

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APPROVED:

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JWH:MM