

STATE TREASURER:

State auditor cannot surrender original documents, drafts or vouchers, but must be preserved in his office.

May 14, 1938

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Honorable Robert W. Winn,
State Treasurer,
Jefferson City, Missouri.

Dear Sir:

This will acknowledge receipt of your request dated May 11, 1938 for an official opinion which request is as follows:

"We have filed in our office 105 drafts drawn on the State Treasurer representing \$9,980.49, these being the drafts forged by Virgil L. Medling.

The National Surety Corporation has paid the State of Missouri and the money has been deposited in the State Treasury. They are now asking that we turn these original drafts over to them.

I made an assignment to the National Surety Corporation in the amount of these drafts and also turned over photostatic copies of each draft to them.

I am asking an opinion from you as to whether I should turn these original drafts over to the National Surety Corporation as per their request or keep them here in my files."

Section 11419, R.S. Mo. 1929 reads as follows:

"All accounts, vouchers and documents settled or to be settled by the auditor

shall be preserved in his office; and copies thereof, authenticated by his official seal, shall be given without charge, to any person, county, city or town interested therein, that may require the same for the purpose of being used as evidence in the trial of a cause, and like copies shall be furnished to any corporation or association requiring the same, upon tender of the fees allowed by law. Provided, that, during each biennial session of the general assembly, the state auditor shall, in the presence of a joint committee of the house of representatives and senate, destroy by burning or by any other method satisfactory to said joint committee all paid accounts, vouchers and duplicate receipts of the state treasurer which may have been on file in the office of the state auditor for a period of eight (8) years or longer, and all automobile and air-craft license and title receipts which have been on file in the office of the state auditor for a period of two years or longer, except such accounts, vouchers and documents as may at the time be the subject of litigation or dispute. Said joint committee to consist of four (4) members of the house of representatives, to be appointed by the speaker of the house of representatives and two (2) members of the senate, to be appointed by the president of the senate."

According to this section all accounts, vouchers and documents settled or to be settled by the auditor shall be preserved in his office. The section also provides for the proper authentication of any such papers which can be used as evidence in any trial. The section also provides as to the method and manner of disposing of such papers.

In construing any statute one must take into consideration the intention of the legislature in passing any

act. In Section 11419, supra, the fact that the legislature provided that all papers shall be preserved in the office of the auditor, and also provided for the manner in which the papers should be disposed of, it is compulsory on the part of the state auditor, which is a part of the treasury department, to follow the manner of keeping and disposing of such papers and not follow any other manner.

In the case of *Dietrich v. Jones*, 53 S.W. (2d) 1059, the court in passing upon the duty of a probate court to follow the statute, said:

"The probate court is a court of limited jurisdiction, possesses only such power as is conferred upon it by statute, and can exercise its jurisdiction only in the manner prescribed by statute."

The court also said that:

"Whenever statute prescribes that a thing shall be done in a particular form, it necessarily prohibits the doing of it in any other form."

Section 11419, supra, sets out a specific manner of the preservation of papers belonging to the treasury department, and also specifically sets out the manner of the disposal of such papers after a certain time, and cannot be disposed of in any other manner.

According to 25 Corpus Juris, 220, note 16 (c) it was said:

"Whenever a statute limits a thing to be done in a particular form, it necessarily includes in itself a negative, namely, that the thing shall not be done otherwise."

When the treasury department assigned to the National Surety Corporation in the amount of the drafts questioned, it assigned the debt itself but not the drafts which are merely evidence of the debt. In view of the statute, Section 11419, supra, in providing for the use of photostatic copies of the draft for the purpose of being used as evidence in

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any trial of the cause, the photostatic copies are sufficient evidence for the National Surety Corporation in any trial that may be had in the controversy.

CONCLUSION

It is the opinion of this department that the treasury department would be violating Section 11419, supra, if it should turn the original drafts over to the National Surety Corporation for the reason that the treasury department in making the assignment of the debt itself and also the photostatic copies of the draft, it has sufficiently complied with the law.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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