

BUILDING AND LOAN: Not required to be custodian of records of liquidated building and loan associations.

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Honorable T. Victor Jeffries  
Supervisor  
Bureau of Building and Loan Supervision  
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion under date of July 9, 1943, which reads as follows:

"We have in Missouri, stored in various real estate offices and federal associations, all the books and papers of former state chartered associations, which have completely liquidated and are no longer in existence. The storage of these books has become a problem to these various concerns and they want us here in the Department to bring the same to Jefferson City, for safe keeping. I can't see where there is much use in preserving all of those old records, either in the Department, or, where they are now located.

"Wish you would give me your opinion as to the responsibility of the Department in the preservation of these old records. If there is none, I am going to suggest that they all be destroyed."

Section 4465, R. S. Mo. 1939, makes it a felony for the destruction of any public record in any public office. Said section provides:

"Every officer or other person having the custody of any record, paper, document or proceedings, or any will, deed or other

writing, specified in either of the last two sections, who shall fraudulently take away, withdraw or destroy any such record, paper, document, proceeding, will, deed or instrument of writing filed or deposited with him, or left in his custody, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years."

Section 3622, R. S. Mo. 1939, requires that any officer shall deliver to his successor all records, books and papers pertaining to his office. Said section reads as follows:

"If any civil or military officer having any record, books, or papers appertaining to any public office or any court shall resign, or his office be vacated, he shall deliver to his successor all such records, books and papers."

Section 8201, R. S. Mo. 1939, requires the Supervisor of building and loan associations to preserve all records, reports and papers pertaining to the Bureau of Building and Loan Supervision, and provides:

"The supervisor of building and loan associations shall preserve all records, reports, and papers pertaining to the bureau of building and loan supervision and shall make a report in writing to the governor on or before the first day of December of each year, which report shall set out in detail the condition and work of the bureau during the year preceding and he shall make such further reports at any time that shall be required by the governor."

Section 8253, R. S. Mo. 1939, requires the Supervisor to keep other files and records, and reads as follows:

"The supervisor shall keep in his office, in addition to the register of dealers and

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salesmen, orderly and sufficient files or records, with adequate indexes, of information received and orders and rulings made by him in pursuance or by authority of the provisions of this chapter, which register, files and records shall be kept open to public inspection at all reasonable hours, and exemplifications of which, under his hand and seal, shall be furnished by him, on request and on payment of the cost of preparing and transmitting the same, and shall be good and sufficient evidence of the original register, files or records so transcribed: Provided, however, that the supervisor shall have power to place in a separate file not open to the public, except on his special order, any information which he deems in justice to the person or building and loan association filing the same should not be made public."

Volume 53, C. J., Section 38, page 622, lays down a general principle that a public officer is responsible for the custody and care of public records, and reads in part as follows:

"A public officer, by virtue of his office, is the legal custodian of all papers, books, and records pertaining to his office, and is responsible for their safekeeping and protection against alteration, injury, or mutilation. Correlative with that duty is his right to exercise a reasonable discretion in the care, management, and control of such records and their preservation.  
\* \* \* \* \*"

The writer notices that you mention in your letter that "We have in Missouri, stored in various places, etc. Surely you do not mean that these records are the property and public records of the Bureau of Building and Loan Supervision, but that such records must belong to the respective associations. If such records are, in fact, property belonging to the Bureau of Building and Loan Supervision, then, in the absence of any specific statute authorizing the destruction of such records

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within a certain time, they must be preserved at all costs. Otherwise, if they are the property of the respective building and loan associations, which we believe is true, then this is not your responsibility.

We find no statute authorizing the Supervisor of the Bureau of Building and Loan Supervision to destroy any records. A public record has been defined as a written memorial made by a public officer who is authorized by law to make it. Also, all records which the law requires a public officer to keep, as such officer, are public records. See Section 1, Vol. 53 C. J., page 604.

Records pertaining to the public in many departments of the State may now be destroyed within a certain stipulated time as provided by statute. However, in the absence of such authorization it is necessary to keep all public records.

#### Conclusion

We are of the opinion that such records of said liquidated associations, having heretofore been kept by said associations and not in the office of the Bureau of Building and Loan Supervision, do not constitute such public records as are required to be kept by the Supervisor of Building and Loan Supervision. Therefore, it is the opinion of this department that you are not authorized to keep such records and are not liable for the safe keeping of same.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.,  
Assistant Attorney-General

APPROVED:

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ROY MCKITTRICK  
Attorney-General

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