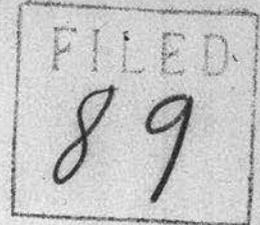


SECRETARY OF STATE: Deed may be withdrawn  
for recording.



February 17, 1949

2-18

Hon. Walter H. Toberman  
Secretary of State  
Jefferson City, Missouri

Attention: Mr. J. Paul Markway  
Chief Clerk

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"We are enclosing herewith a copy of a letter from Brigadier General John A. Harris asking advice as to whether or not this office can send a National Guard Armory deed to a county recorder for recordation. Details are explained in said attached copy of his letter.

"Section 13002 R. S. Mo. 1939 states, 'He (the Secretary of State) shall not permit any original roll, paper or public document filed in his office to be taken out of it unless called for by a resolution of either or both houses of the general assembly, or for the examination of the executive.'

"In view of this, we respectfully request your opinion as to whether or not this deed may be sent for recordation."

The letter from General Harris, to which you refer, explains that the deed was entered into on August 24, 1938, between Doniphan Consolidated School District No. 1 of Ripley County and the State of Missouri; it was filed in the office of Secretary of State without having been recorded in Ripley County where the land involved is located; and the Recorder

of Ripley County has requested that the original on file in your office be submitted to him for recording, in view of Section 13178, R. S. Mo. 1939, which provides that where an instrument is offered for a record which is more than one year old, the instrument must remain on file in the office of the recorder for a period of one year.

The Secretary of State is the custodian of such records and documents as provided by law (Section 14, Article IV, Constitution of 1945). Section 12995, R. S. Mo. 1939, re-enacted Laws of 1945, page 1725, provides that the Secretary of State shall "have the safe-keeping \* \* \* of all public records, including surety bonds except of secretary of state, rolls, documents, acts, resolutions and orders of the general assembly; keep a register of all commissions issued, the official acts of the governor, and, when necessary, attest the same."

We find no statutory provision in effect either at the present or at the time the deed in question was executed requiring such deed to be filed in the office of the Secretary of State to become a public record.

On the other hand, the records of the various recorders' offices in this state are the primary basis of information regarding the ownership of real estate. Section 3426, R. S. Mo. 1939, provides:

"Every instrument in writing that conveys any real estate, or whereby any real estate may be affected, in law or equity, proved or acknowledged and certified in the manner hereinbefore prescribed, shall be recorded in the office of the recorder of the county in which such real estate is situated."

Section 3427, R. S. Mo. 1939, provides that every such instrument shall, from the time of filing, impart notice to all persons of its contents.

Section 3428, R. S. Mo. 1939, provides that no deed shall be valid, except between the parties thereto and persons with actual knowledge, until it has been deposited with the recorder for record.

We feel that it was not the intention of the Legislature in enacting Section 13002, R. S. Mo. 1939, prohibiting the removal of any original roll, paper or public document from the office of the Secretary of State unless called for by a resolution of either or both houses of the General Assembly or for examination of the Chief Executive, to prohibit a withdrawal of an instrument, such as the one here in question, which was not required by any law to be filed with the Secretary of State and which was filed there erroneously prior to being recorded as required by law. Rather, we feel that the intent of the Legislature, and the purpose of the section which you have cited, is to preserve all the documents which are required to be filed with the Secretary of State and for the authenticity of which the Secretary of State is primarily responsible.

We feel that the recorder is justified in requiring the original for recording, in view of the fact that Section 13178, R. S. Mo. 1939, requires the recorder to retain in his office, for one year after recording, any instrument of writing affecting real estate which purports to have been signed and acknowledged more than twelve months prior to the time the same is presented for record. Section 13179, R. S. Mo. 1939, makes the failure of the recorder to comply with Section 13178 a misdemeanor.

#### Conclusion.

Therefore, this department is of the opinion that Section 13002, R. S. Mo. 1939, dealing with the removal of public documents from the office of Secretary of State, is not applicable to an instrument conveying real estate to the State of Missouri which was filed in the office of the Secretary of State and which was not recorded in the county in which the real estate affected by the conveyance is located, and that such deed may be withdrawn from the office of the Secretary of State for the purpose of properly recording it.

Respectfully submitted,

APPROVED:

ROBERT R. WELBORN  
Assistant Attorney General

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J. E. TAYLOR  
Attorney General

RRW:ml