

PROBATE COURT:  
RECORDS:

Justices of the peace records and probate court minute books may not be destroyed.

January 17, 1952



1-18-52

Honorable Aubrey R. Marshall, Judge  
Probate and Magistrate Courts  
Randolph County  
Moberly, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this department which request reads in part as follows:

"A great deal of the very limited space in our vault is taken up with minute books of the Probate Court and Justices of the Peace records.

"In regard to the minute books of the Probate Court \* \* \* might they be destroyed or stored in the basement of the court house at Huntsville, Mo., (preferably be destroyed.)

"In regard to records of the Justices of the Peace. We have been unable to keep all of these in the vault but after the civil judgments have been transcribed to a record of the Magistrate Court shall we continue to keep them or as many of them as we can, in the vault? When, if ever, may they be destroyed?"

Laws of Missouri, 1945, page 765, Section 7, provided that at the expiration of their terms, all justices of the peace shall

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deliver to the clerk of the magistrate court of their county all dockets, records and documents appertaining to their office. This law, as amended is now found in Section 482.070, RSMo 1949, which provides as follows:

"The clerk of the magistrate court shall prepare and keep in a well-bound book an abstract and index of all unsatisfied judgments in civil cases appearing in the records of justices of the peace which have been delivered to him, and which were rendered at any time after the first day of January 1935. Such abstract and index shall show the names of the parties to each action in which the judgment was rendered, arranged so that the names of the parties in whose favor the judgment was rendered shall appear in alphabetical order, the date of the judgment, the amount thereof and an appropriate reference to the book or record where the record of such judgment may be found."

Said clerk of the magistrate court shall prepare and keep an abstract and index of all unsatisfied judgments in civil cases appearing in the records of justices of the peace which have been delivered to him. It is further noted that this section further provides that such abstracts and indexes shall contain appropriate references to the book of record where the record of such judgment may be found absent any specific provision authorizing a destruction of such documents. This provision indicates that such records shall be preserved. This conclusion is further exemplified by paragraph 2, of Section 482.070, RSMo 1949, requiring the county court to provide storage space for such records as follows:

"The county court shall provide an adequate and safe storage place for the books and records of justices of the peace which shall be readily accessible to the magistrate court."

Section 109.150, RSMo 1949, provides that the county courts are authorized to destroy, after five years, certain designated papers. However, said section does not authorize the destruction of records in the possession of the magistrate court since the magistrate court is a court of record over which the county court would have no jurisdiction.

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Section 476.010, RSMo 1949, provides that the judge of the probate court shall keep a record of the proceedings in said court. The judge or clerk of the probate court in making entries in the minute book is acting in his official capacity and therefore, such minute books would be deemed public records. We have been unable to find any provision authorizing the destruction of the records of courts of record such as minute books of the probate court. Therefore, we are of the opinion that such minute books shall be preserved. This rule is found in 45 Am. Jur., Records, Section 12, Page 425.

"Public records and documents are the property of the state and not of the individual who happens, at the moment, to have them in his possession, and when they are deposited in the place designated for them by law, there they must remain, and can be removed only under authority of an act of the legislature and in the manner and for the purpose designated by law. The custodian of a public record cannot destroy it, deface it, or give it up without authority from the same source which required it to be made. \* \* \*"

We find no provision which requires the probate court to keep its minute books in a vault. However, in preserving such records a safe storage space should be provided in order to secure their preservation.

It is the duty of the county to provide offices or space where such officers as the judge of the probate court may properly carry on and perform the duties and functions of their office, Section 49.510, RSMo 1949. We see no reason why storage space could not be provided any place within the court house where court is regularly held; provided, that such space is reasonably safe and under the supervision and control of the magistrate or probate court.

#### CONCLUSION

Therefore, it is the opinion of this department that the records of the justices of the peace delivered to the magistrate court and the minute books of the probate court, being public records, may not be destroyed, there being no authority for such destruction.

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We are further of the opinion that the minute books of the probate court may be stored in the basement of the court house; provided, that such space shall be reasonably safe for the preservation of such records and under the supervision and control of the probate court.

Respectfully submitted,

D. D. GUFFEY  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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