

DESTRUCTION OF
DOCUMENTS:

Can official records, documents, etc. of the State Treasurer, Commissioner of Finance and the Division of Insurance be destroyed after the sine die adjournment of the General Assembly where the statute authorizing the destruction provides for destruction "during each biennial session of the General Assembly."

JOHN M. DALTON
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June 26, 1953

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J. C. Johnsen

Honorable Lester A. Vonderschmidt
Speaker, House of Representatives
Jefferson City, Missouri

Dear Sir:

We are in receipt of your letter of June 11, 1953, requesting an opinion of this office concerning the destruction of documents, which request is as follows:

"The House of Representatives adopted House Resolution No. 71 which provided for destruction of old records of the State Treasurer and the Senate adopted Senate Resolution No. 85 which was similar. The House members were appointed pursuant to the House Resolution and the Senate members were appointed pursuant to the Senate resolution. Your attention is called to Section 30.340 which provides that 'during each biennial session of the General Assembly' the records may be destroyed.

"Senate Bill No. 369 of the 67th General Assembly repeals and re-enacts Section 361.120 and provides that 'during each biennial session of the General Assembly' the records may be destroyed. This bill does not carry an emergency clause but I believe it has been signed by the Governor, but it will not take effect until ninety days after May 31, 1953.

"Senate Bill No. 350 of the 67th General Assembly relates to the destruction of records of the Division of Insurance and it carries an emergency clause. It also provides that 'During each biennial session' the records may be destroyed.

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"None of these committees have acted, and I am informed that it is urgent some of the records be destroyed because of the need for storage space. In view of the wording of the statute 'during each biennial session of the General Assembly . . .' would it be possible for the committees to act now that the General Assembly is in adjournment?

"Mr. Joseph A. Bauer, Secretary of the Senate, suggests that the words 'biennial session' might mean the entire two year period rather than the period ending May 31, 1953. We would like to have your opinion as to whether under the statute the records may now be destroyed."

Section 30.340, RSMo. 1949, provides for the destruction of certain records, etc., in the office of the State Treasurer. This statute reads:

"During each biennial session of the general assembly, the state treasurer may, 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, such records, financial statements and such public documents which may be on file in the office of the state treasurer or his predecessor as custodian of such records and documents for a period of five years or longer and which are determined to be obsolete or of no further public use or value except such records and documents as may at the time be the subject of litigation or dispute. Said joint committee shall consist of four members of the house of representatives, to be appointed by the speaker of the house of representatives, and two members of the senate, to be appointed by the president pro tem of the senate."

Senate Bill #369 repealed and reenacted Section 361.120 RSMo. 1949, pertaining to the office of the Commissioner of Finance. This Bill was finally passed and approved by the Governor June 8, 1953. The Bill does not contain an emergency clause.

Senate Bill #350 repealed and reenacted Section 374.070, RSMo. 1949, pertaining to the office of Superintendent of Insurance. This Bill was passed May 3, 1953, and approved by the Governor June 5, 1953. This Bill contains an emergency clause.

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Each of the above two new enactments contains provisions for the destruction of official papers, documents and records which are in all pertinent details the same as the provisions of Section 30.340, RSMo. 1949, as quoted above. The question with which we are concerned is specifically, can the official documents, records, etc., of the various offices be destroyed pursuant to the provisions of the above statutes after the adjournment sine die of the General Assembly, and it seems that the answer to this question primarily depends upon the meaning of the phrase found in each of the said statutes "during each biennial session of the General Assembly." The important word in this phrase is the word "session" and it becomes necessary to determine what period of time is indicated by the use of said word in these statutes. No case or other authority concerning the meaning of the word "session" has been found from the State of Missouri.

A definition of the word "session" is found in 57 C.J. 286, Session, Section 4, wherein the word session in the sense of time is defined as follows:

"In a more extended sense, a term of a court, or of a legislative body; the entire period intervening between the convening of a tribunal or assembly and its final adjournment; the period, space, term, or time during which a court, council, legislature, or the like meets daily, or regularly, for business; or transacts business regularly, without breaking up; the space of time between the first meeting and the prorogation or final adjournment, of each particular sitting or term; the time during which any body of persons or tribunal is organized, competent for transaction of its business."

and see the cases cited in the footnotes to the above text.

In the case of John B. Farwell Co. v. Matheis (C.C.D. Minn. 1891) 48 Fed 363, the Court defined the word session as applied to a legislature as follows:

"The prime definition of this word, when applied to a legislative body, is the actual sitting of the members of such body for the transaction of business. It also may be used to denote the term during which the legislature meet daily for business, and also the space of time between the first meeting and the adjournment."

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Likewise in the case of U.S. v. Dietrich (C.C.D. Neb. 1904) 126 Fed. 659, the court, in considering the meaning of the word session, as applied to the sitting of a court, gave the following general definition:

"These cases show that the word is sometimes employed to indicate an actual sitting of a court, legislative body, or other assembly not interrupted by adjournment; that at other times it is employed to indicate an actual sitting continued by adjournments in ordinary course of from day to day, or over Sundays and holidays but not interrupted by adjournment to a distant day; and that at still other times it is employed as the equivalent of 'term' - that is, to indicate the entire period intervening between the convening of a tribunal or assembly and its final adjournment."

See also Shaw v. Carter (Okla. Sup. 1931) 297 P. 273, l.c. 279, where the Supreme Court of Oklahoma defined the term session as applied to the Legislature of the State of Oklahoma as follows:

"The expression 'during the session of the legislature' means an entirety, during all of the time that there is a sitting together of the legislative body for the transaction of business; the time during which the Legislature transacts its business; the space of time between the first meeting and final adjournment, or the period from its assembling to its adjournment."

The Missouri Constitution of 1945 mentions the word session in provisions concerning the General Assembly in Article III, Sections 25, 29 and 39(7). In each of said sections it is clear from the context that the word session is used to designate a period of time during which the Legislature is actually sitting and does not indicate a meaning that would include the full two-year biennial period.

From the above it is concluded that under the statutory provision "during each biennial session of the General Assembly," the official documents, files and records of the above mentioned departments can only be destroyed during the regular biennial

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session of the General Assembly, that is, the period between its convening in January and its adjournment sine die on the last of May and that the above quoted provision of the statute prohibits such destruction after such sine die adjournment.

Further, each of the above mentioned statutes provide that such documents and records, etc., are to be destroyed in the presence of a joint committee of the House of Representatives and Senate. Senate Resolution #85 and House Resolution #71 provide for such joint committee but refer only to the office of State Treasurer and the statute section 30.340 which concerns only the office of State Treasurer and authorizes the joint committee created by such resolutions to function only as to said office.

This office is advised that no joint committee was created by the House and Senate during the past term of the Legislature for the destruction of documents in the office of Superintendent of Insurance or Commissioner of Finance. This is entirely understandable since there was no law authorizing such committees until after the sine die adjournment of the General Assembly.

Even if there were committees as to all three offices in question and as to the committee concerning the office of the State Treasurer no action was taken during the time in which the General Assembly was in actual session and the general rule is that absent specific authority in proper form a committee of the Legislature cannot act after the sine die adjournment of such body. It is generally held that the power of the Legislature ceases upon such sine die adjournment and likewise the power of any committee created by such body. This is especially true when there is no specific authority for the action of the committee after such sine die adjournment and there was no such authority given to the committee concerning the office of the State Treasurer. It further appears that it is generally held that authority to act after sine die adjournment of the Legislature can only be conferred by action of both houses of the Legislature with formality similar to that necessary to enact laws. In the State of Missouri that would be by either a bill or joint resolution approved by the Governor.

Again no authority has been found from the State of Missouri either by statute or case law concerning this problem but the general rule seems to be as set out above.

See 28 A.L.R. 1154, 1156-7, where it is said:

"A legislative committee has no power to act during the recess of the legislature unless it was especially authorized to do so. * * *
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"While it cannot be denied that the legislature has the power to authorize a committee of its body to sit during vacation, inasmuch as the existence of all committees, in the absence of legislation, necessarily determines upon the adjournment of the body to which they belong, there must be an explicit enactment that the sessions of the committee can be held after such adjournment, or at least a clear and unmistakable implication to that effect from the words used in the act or resolution creating the committee, before it can be a legally created committee, to sit after the adjournment of the legislature. * * * *"

This general rule is likewise set out in 49 Am. Jur. 258, States, Territories and Dependencies, Section 41, where it is said:

"* * * In the absence of special authority, however, committees appointed by the legislature have no power to sit after adjournment sine die of the legislature, and inasmuch as in the absence of legislation, the existence of all committees necessarily determines upon the adjournment of the body to which they belong, there must be an explicit enactment that the sessions of the committee can be held after such adjournment, or at least a clear and unmistakable implication to that effect from the words used in the act creating the committee, before it can be a legally created committee to sit after the adjournment of the legislature. Moreover, authority of a committee to sit during a recess of the legislature must ordinarily be derived from the joint act of both houses, that is, from a regularly passed act of the assembly. A legislative committee authorized to make investigations and hold its sessions after the adjournment of the legislature cannot be created by one body of the legislature by a resolution which is not concurred in by the other. According to most authorities, a mere concurrent or joint resolution of both houses which calls into being a legislative committee or continues the existence of such a committee is not sufficient to give the committee life after the functions of the legislative body as such have ceased with its adjournment, sine die, except in those jurisdictions where joint

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resolutions are recognized as equivalent to laws enacted by bills. In the latter case, the resolution creating the committee must contain an explicit provision empowering the committee to sit after adjournment, or the implication to that effect must be clear and unmistakable."

See also the case of Russell v. Cone (Ark. Sup. 1925) 272 S.W. 678, and Petition of Special Committee, etc. (Calif. Sup. 1938) 83 P. 2d. 932, where the Supreme Court of California, giving careful consideration to the powers of the Legislative Committee to act after sine die adjournment of the Legislative body, said:

"The overwhelming weight of authority is to the effect that neither house of a legislature may lawfully appoint a committee by single house resolution with power to sit after adjournment sine die, in fact, every state court that has considered this problem has so held."

It therefore further appears that absent any other consideration the committee created by Senate Resolution 85 and House Resolution 71 would not have authority to act after the sine die adjournment of the General Assembly of the State of Missouri.

CONCLUSION

It is the conclusion of this office from the general rules as set out above that the statutory provisions "during each biennial session of the General Assembly" limits action to the period of time from the convening of the General Assembly in January to its adjournment sine die, and by implication prohibits action during the remainder of the two year biennial period. And further, that the committee created by Senate Resolution 85 and House Resolution 71 concerning the office of the State Treasurer is without power as constituted to function after the sine die adjournment of the General Assembly.

This opinion which I hereby approve was written by my assistant, Mr. Fred L. Howard.

Yours very truly,

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JOHN M. DALTON
Attorney General