

PUBLIC RECORDS:
RECORDER OF DEEDS:
COUNTY COURTS:

Recorder of Deeds has primary responsibility for custody and control of public records in office. Order of county court prohibiting removal of such records from such office is a nullity.



August 1, 1955

Honorable Morran D. Harris
Prosecuting Attorney
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Osceola, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department which, for the sake of brevity and clarity, we rephrase in the following language:

"Does the county court have the authority to prohibit the recorder of deeds from permitting the temporary withdrawal of public records from the office of such official?"

Under the provisions of Chapter 59, RSMo 1949, the office of Recorder of Deeds in the various counties has been created. Such office is the repository of records relating to title to real property, encumbrances upon real property, marriage licenses issued and numerous similar documents having the characteristics of being related to matters of public concern. That such records so required to be kept are of a "public" or "official" nature appears rather clear from what was said by our Supreme Court in *State ex rel. Kavanaugh v. Henderson*, 169 S. W. (2d) 389, wherein that court made the following observations, l. c. 392:

"In all instances where, by law or regulation, a document is required to be filed in a public office, it is a public record and the public has a right to inspect it. 53 Corpus Juris, Section 1, Pages 604 and 605; *Clement v. Graham*, 78 Vt. 290, 63 A. 146. Ann.Cas. 1913E, 1208; *Robison v. Fishback*, 175 Ind. 132, 93 N.E. 666, L.R.A. 1917B, 1179, Ann. Cas. 1913B, 1271;

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State ex rel. Eggers v. Brown, 345
Mo. 430, 134 S. W. 2d 28."

Having determined the nature of such records it becomes pertinent to determine the proper official who may exercise control over their safekeeping and usage. The general rule is stated thusly in 76 C.J.S., "Records" page 132, paragraph 34, reading 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, and for their delivery to his successor. Correlative with that duty is his right to exercise a reasonable discretion in the care, management, and control of such records and their preservation."

It appears from the foregoing, when read in the light of statutes applicable to the office of Recorder of Deeds, that such public official comes within the purview of the rule of law quoted supra. Narrowing our research into the law as it may be applicable to the particular problem you have proposed, we note the following further rule found in the same volume at page 147, paragraph 39, which reads in part as follows:

"It has been stated that private individuals have no right to remove public records or papers from the office or files where they belong; and when permission to do so is granted it is a matter of favor and not of right. A practice of removing a public record leads to confusion and delay besides the possibility of the loss of the record and should not ordinarily

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be permitted." (Emphasis ours)

We deem it pertinent to observe that while the authority to permit withdrawal of public records appears to be inherent, yet in the light of the emphasized portion of the rule quoted it appears to be a practice not to be encouraged. Even more strongly, in *Sternberger v. McSween*, 14 S. C. 35, that court specifically held that judicial sanction should not be given nor could not be given to such practice.

We find no cases reported in the appellate courts of Missouri passing upon the precise question of the superiority of the right of control and custody of public records as between the official having charge thereof and a body such as the county court. However, in *Babcock v. Hahn*, reported 175 Mo. 136, there is an implied recognition of the right of the Recorder of Deeds to exercise superior authority over the public records committed to his care. In that case the Recorder of Deeds of the City of St. Louis proposed to remove his office from the established courthouse to another public building. The plaintiff in the suit, a taxpayer and citizen of the city of St. Louis, sought to enjoin the change in location of the office. The primary question, of course, involved was whether the contemplated place of removal fell within the meaning of the phrase "seat of justice" as that term was used with reference to the situs where such office should be maintained. The court held that the proposed new location was within the area included in the phrase and upheld the right of the official to make such change.

We are not unmindful of the case also decided by the Supreme Court of Missouri, styled the *State ex rel. Powell et al. v. Shocklee et al.*, reported 237 Mo. 460. In that case the county court had ordered the removal of the office of Recorder of Deeds from Danville, in Montgomery County, to Montgomery City, in the same county. Such action was taken under a statute authorizing county courts in counties wherein no courthouse or other suitable county building was available at the seat of justice to provide office facilities for the Recorder of Deeds at some other place in the county where there might be a courthouse and courts of record held sessions. This action of the county court was upheld. However, it will

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be observed that in that instance the county court merely ordered the relocation of the office which, while necessarily also requiring the removal of the public records to the new location, did not purport to attempt to extend or impose the authority of the county court over the public records themselves. Therefore, it cannot be said that this case is authority contrary to the general rules quoted, supra, and with which we are in accord.

CONCLUSION

In the premises we are of the opinion that the Recorder of Deeds has the primary responsibility for the custody, control and safekeeping of public records in his office and may permit the temporary withdrawal of such records to persons, and for reasons, determined by such official to be proper, subject to the requirement that such official is liable upon his official bond for damages which may be occasioned thereby.

It is our further opinion that the practice of permitting the withdrawal of such public records is not one to be encouraged because of the public inconvenience and confusion which may result therefrom, but that the county court has no authority to unequivocally by order of record prohibit such withdrawal.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours

John M. Dalton
Attorney General

WFB,Jr:lc