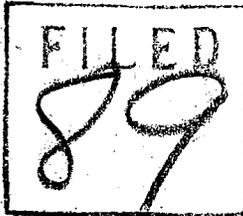


SECRETARY OF STATE:
POWER OF SECRETARY
OF STATE:
FLAG OF MISSOURI:
GREAT SEAL OF MISSOURI:

The Secretary of State of Missouri does not have the authority to grant permission for the use of the Flag or Great Seal of Missouri to any of the following: (1) Private firms for commercial purposes (2) Fraternal, benevolent and other nonprofit organizations for noncommercial purposes (3) Candidates for political office.



February 23, 1956

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

Dear Mr. Toberman:

This will acknowledge receipt of your request of recent date in which you ask the following:

"Will you please advise this office regarding the commercial use of the Great Seal and the Missouri State Flag. Specifically, we at present have a request from Snyder and Black of New York, asking us if the firm can use the flag for advertising purposes, and we also have another recent request from E. T. Nash Merchandise Company of New York, asking for permission to use the Great Seal on a serving tray to be placed on the market in the near future.

"Although Section 10.080, R. S. Mo., 1949, states the original copy of the flag's design shall be kept in the office of the secretary of state, does this mean we are the custodian of the flag, and therefore, can grant permission for its use for commercial purposes?

"This office is cognizant of the fact the secretary of state is custodian of the great seal of the State of Missouri, but in the opinion of the attorney general, may we grant commercial use of the seal to:

- 1.- Private firms for commercial purposes.
- 2.- Fraternal, benevolent and other nonprofit organizations for noncommercial purposes.
- 3.- Candidates for political office.

"We will appreciate your opinion in these matters and sincerely hope you will call upon us if any further information is desired."

It is the opinion of this writer that the Secretary of State does not possess the authority to issue a license for use of the Flag and Great Seal of Missouri for any of the uses requested. There seems to be no reason for distinguishing between the use of the flag and Great Seal of Missouri by (1) private firms for commercial purposes, (2) fraternal, benevolent and other nonprofit organizations for noncommercial purposes, and (3) candidates for political offices, since, if there is no authority in the Secretary of State to issue such licenses, then it is immaterial as to who the requestee is.

The specific questions presented have not been resolved by the courts of this state, or, for that matter, the courts of any other state. However, the legislature has set out in numerous statutes the powers and duties of the Secretary of State with reference to the Great Seal of Missouri.

Article IV, Section 14 of the 1945 Constitution provides:

"Secretary of state--duties--state seal--official register--limitation on duties.--The secretary of state shall be custodian of the seal of the state, and authenticate therewith all official acts of the governor except the approval of laws. The seal shall be called the 'Great Seal of the State of Missouri,' and its present emblems and devices shall not be subject to change. He shall keep a register of the official acts of the governor, attest them when necessary, and when required shall lay copies thereof, and of all papers relative thereto, before either house of the general assembly. He shall be custodian of such records, and documents and perform such duties in relation thereto, and in relation to elections and corporations, as provided by law, but no duty shall be imposed on him by law which is not related to his duties as prescribed in this constitution."

The only statute concerning the Secretary of State with reference to the Flag of Missouri is Section 10.080, RSMo 1949, which reads as follows:

"Flag, official--design of--original design--where kept.--There is hereby adopted an official flag of the state of Missouri, which shall be rectangular in shape, the vertical width of which shall be to the horizontal length as seven is to twelve. It shall have one red, one white and one blue horizontal stripe of equal width; the red shall be at the top and the blue at the bottom. In the center of the flag there shall be a band of blue in the form of a circle enclosing the coat of arms in the colors as now established by law on a white ground. The width of the blue band shall be one-fourteenth of the vertical width of the flag and the diameter of the circle shall be one-third of the horizontal length of the flag. In the blue band there shall be, set at equal distances from each other, twenty-four five pointed stars. The original copy of the design shall be kept in the office of the secretary of state. The flag shall conform to the design herein set out on adjoining page."

Nowhere in the Constitution or the several statutes is there any express power given to the Secretary of State to issue a license of the type in question. Thus, it appears that any implied power to grant the license requested is negatived.

It further appears from the nature of his office that the Secretary of State's duties and powers are confined mainly to activities within the state. The statutes bear this out by limiting the duties and powers of the Secretary of State with respect to activities outside the state and confining them mainly to internal affairs. These conclusions are strengthened by the language in 59 Corpus Juris 116, Section 140:

"The secretary of state is an executive or ministerial officer, and possesses no judicial powers. He exercises his powers and duties throughout the territorial boundaries of the state, and for the purpose of discharging his functions is deemed constructively present in every part thereof. The secretary of state possesses no substantive powers except such as are enumerated in constitution or statute, cannot perform functions not falling within the authorized scope of his official duties, and can be required to act only in compliance with an existing law."

Honorable Walter H. Toberman -4-

If necessary, the questions might be resolved on the ground of public policy. In other words, there seems to be a second reason for denying the authority to the Secretary of State to issue the license in question. Certainly the people of Missouri would look with disfavor upon the use of the Flag and Great Seal of Missouri for other than official uses and identification purposes. They (Flag and Great Seal of Missouri) are traditionally thought of as being the inalienable property of the state, and to grant the use requested would result in a loss of dignity and efficacy to the Flag and Great Seal of Missouri.

CONCLUSION

It is therefore the opinion of this office that the Secretary of State of Missouri does not have the authority to grant permission for the use of the Flag or Great Seal of Missouri to any of the following:

- (1) Private firms for commercial purposes
- (2) Fraternal, benevolent and other nonprofit organizations for noncommercial purposes, and
- (3) Candidates for political office.

Yours very truly,

JOHN M. DALTON
Attorney General

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