

BOARD OF POLICE COMMISSIONER
KANSAS CITY, MISSOURI:
MICROFILMING OF POLICE RECORDS:

It is the opinion of this department that the order, pursuant to Section 109.140, RSMo 1949, authorizing the disposal, archival storage or destruction of records of the police department of Kansas City, Missouri, which have been photographed or microfilmed should be obtained from the Governor of Missouri.

September 1, 1960

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Honorable Henry H. Fox, Jr.
Secretary-Attorney
Board of Police Commissioners
Kansas City 6, Missouri

Dear Mr. Fox:

Your recent request for an official opinion reads:

"I am in receipt of your opinion relative to the microfilming of records pursuant to Sections 109.120, 109.130 and 109.140, of the Revised Statutes of Missouri, as these sections pertain to the Police Department of Kansas City, Missouri.

"The opinion does not specifically cover the particular question which we have in mind, and that is whether under Section 109.140, the order to dispose of and destroy records which have been microfilmed or photographed should come from the Governor or the Mayor."

Section 109.140, RSMo 1949, reads:

"Whenever such photostatic copies, photographs, microphotographs or reproductions on films shall be placed in conveniently accessible files and provisions made for preserving, examining and using same, the said head of a state department, commission, bureau or board, county office or department, city office or department may certify those facts to the governor, or to the county court or to the mayor of a municipality, respectively, according to their status as subdivisions of government, who shall have the power to authorize the disposal, archival storage or destruction of the records or papers from which such photographic copies were made."

Section 84.350, RSMo, Cum. Supp. 1957, reads:

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"In all cities of this state that now have, or may hereafter have three hundred thousand inhabitants and not over seven hundred thousand inhabitants, there shall be, and is hereby established, within and for the cities, a board of police commissioners to consist of four commissioners as provided in section 84.360, together with the mayor of said cities, or whosoever may be officially acting in that capacity, and the board shall appoint one of its members as president, and one member as vice-president; and the president, or vice-president in the absence of the president, shall be the presiding officer of the board and shall act for it when the board is not in session. The commissioners shall be citizens of the state of Missouri and shall have been residents of the respective cities in which they are appointed to serve for a period of four years next preceding their appointment. They shall, except as specified in section 84.360, hold their offices for four years, and until their respective successors are appointed, and qualified, and received each a salary of two thousand four hundred dollars per annum, payable not less than semimonthly. As amended Laws 1957, 2nd Ex. Sess. p. 152, §1."

Section 84.360, RSMo 1949, reads:

"The governor of the state of Missouri, by and with the consent of the senate, shall appoint the four commissioners provided for in section 84.350, and one commissioner shall be appointed for a term of one year; one commissioner shall be appointed for a term of two years; one commissioner shall be appointed for a term of three years; one commissioner shall be appointed for a term of four years. Their successor shall each be appointed for a term of four years, and said commissioners shall hold office for their term of appointment and until their successors shall have been appointed and qualified. In case of a vacancy in said board from any cause whatever, it shall be filled by appointment for the unexpired term, in the same manner as in the case of original appointments. The governor shall issue commissions to the persons so appointed, designating the time for which they are appointed in case the appointment is to fill an unexpired term occasioned by death, resignation or any other cause whatever, and whenever the term of office of any commissioner expires, the appointment of his successor shall

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be for four years."

From the above it will be noted that the Kansas City Board of Police Commissioners consists of four commissioners appointed by the Governor of Missouri and the mayor of the City of Kansas City or whosoever may be officially acting in that capacity at any particular time.

The matter of to whom there shall be certified the facts set forth in Section 109.140, supra, whether to the Governor, or the county court or the mayor of a municipality is determined "according to their status as subdivisions of government * * *."

In this regard we would direct attention to the case of State v. Kemp, 283 SW2d 502. In that case the Missouri Supreme Court stated in part, 1.c. 514 [2,3]:

"The statutes creating the board of police commissioners of Kansas City and the police department thereof, defining their respective duties, powers and responsibilities, and providing for their maintenance, §§84.350-84.860, expressly retain jurisdiction of the Kansas City police system as an agency of the state. American Fire Alarm Co. v. Board of Police Commissioners, 285 Mo. 581, 227 SW 114, 116-117 [1-3]. It is, therefore, hardly conceivable the Legislature could have intended that the city, chargeable as a state agency with the maintenance of the state controlled police department in the manner prescribed by §§ 84.730 and 84.780, should at the same time have the power as a municipal corporation to defeat the legislative mandate of the State of Missouri through a policy of 'earmarking', either by charter or ordinance, portions of its revenue that otherwise would constitute 'general revenue' within the meaning of §84.730. This does not mean that the city may not, for its own purposes, lawfully divide its funds or allocate them in any manner it sees fit or subject its general revenue funds to particular public purposes, so long as it does not do so contrary to statute or its charter. 64 C.J.S., Municipal Corporations, §1884, pp. 443-444. But we think it does mean the city may not, solely by authority of its charter or by ordinance, make such funds unavailable to the state under §84.730. In so concluding, we reaffirm a principle long since announced

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and consistently followed in this state."

"* * * It is significant that the original legislative act supplanted the municipal system which had existed prior to that time. Id., [153 Mo 23] l.c. 32 (54 SW 524). The opinion written by Judge Gantt, referring to earlier cases, says ([153 Mo.] l.c. 47 [54 SW 530]):

"The power of the Legislature to provide the necessary agencies to perform the high functions of the state in the preservation of * * * peace, etc., and to impose the duty of paying therefor on the locality for which * * * said agencies were created, was fully and firmly established." "

From the above it would clearly appear that the Kansas City Board of Police Commissioners is a state agency and has the status of a subdivision of the state government. For that reason we believe that the certification of the facts referred to in Section 109.140, supra, should be to the Governor of Missouri.

CONCLUSION

It is the opinion of this department that the order, pursuant to Section 109.140, RSMo 1949, authorizing the disposal, archival storage or destruction of records of the police department of Kansas City, Missouri, which have been photographed or microfilmed should be obtained from the Governor of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

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