PUBLIC RECORDS:
MICRO-FILMING:
ORIGINALS DESTROYED
BY SECRETARY OF STATE:
WHEN:

Sections 109.120 and 109.130, RSMo 1959 authorize Secretary of State to micro-film permanent records of articles of incorporation with amendments, of "inactive" domestic and foreign corporations and fictitious names records five or more years old, and deem reproductions originals. Reproductions to be placed in conveniently accessible files for preservation and examination. He may certify facts to governor and if governor orders distruction of records from which reproductions made, secretary of state may destroy same.

April 21, 1961

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38

Mr. Warren E. Hearnes
Secretary of State
State Capitol Building
Jefferson City, Missouri

Dear Mr. Hearnes:

This office is in receipt of your request for a legal opinion, which reads in part as follows:

> "1. May the Secretary of State pursuant to Sections 28.100, 109.120, 109.130, 109.140 or other statutory provisions, micro-film the corporate records of the corporations referred to in Exhibits "A" and "B" and the Fictitious Name registrations referred to in Exhibit "C", preserve such micro-filming as original records, and there after destroy the original records.
>
> "2. Assuming such records may be destroyed, what procedure shall be followed.
>
> "3. In the case of foreign corporations, Exhibit "B", will it be necessary to micro-film and preserve the Articles of Incorporation and amendments thereto in view of the fact that such original records are on file in the various states, and that only certifications of such records from these various states are on file with the Secretary of State of Missouri."

The opinion request refers to attached Exhibits "A", "B" and "C", the contents of which will be referred to herein.

Exhibit "A", refers to domestic business corporation

records legally required to be kept by the secretary of state. From said Exhibit, it appears that more than 100,000 corporations have been organized in Missouri since 1849. 30,000 of these are presently in good standing, while 70,000 have for different reasons, lost their corporate identity, and it is with the records of these "inactive" corporations the present inquiry has been asked.

Exhibit "B", refers to corporations organized and existing under the laws of other states, seeking to do business in Missouri, and the records of such corporations are required to be kept by the secretary of state of Missouri. It appears that from 1898, approximately 15,000 foreign corporations have qualified to do business in this state. Of the original number 5,000 are presently in good standing, and 10,000 have lost their authority to do business in the state, and it is with the records of such "inactive" corporations the present inquiry has been asked.

Exhibit "C", refers to records on "fictitious names", registrations, required by the applicable statutes to be kept by the secretary of state. Since the first filing in 1919, nearly 52,000 fictitious names registrations have been effected.

The statutes fail to regulate the amendment, withdrawal or renewal of the filings, and it cannot be ascertained how many of the total number of registrations are "currently accurate", and those on "inoperative business". The secretary of state proposes to micro-film all fictitious names registrations records on file in his office five years or more and to destroy the original records thereafter.

Section 351.060, RSMo 1959, requires the articles of incorporation of domestic business corporations to be signed, sworn and acknowledged by all incorporators and to be delivered in duplicate to the secretary of state of every such corporation granted authority to do business. The secretary of state shall retain one copy of the articles of incorporation and all amendments thereto, as a permanent record in his office.

Before attempting to do business in Missouri, foreign corporations must procure a certificate from the secretary of state, authorizing them to do so, in accordance with the provisions of Sections 351.570 to 351.610, RSMo 1959, accompanying the application containing certain information, set out in

Section 351.580. Section 351.585, RSMo 1959, requires properly authenticated duplicate copies of the articles of incorporation, with all amendments, to be filed with the secretary of state, one of which duplicate copies, he shall retain in his office as a permanent record.

Section 417.200 to 417.230, RSMo 1959, requires persons operating a business under a fictitious name, or under any name other than the true names of such persons, within five days after engaging in such business to register the fictitious name with the secretary of state, together with a verified statement of the information required by Section 417.210.

Sections 28.100, 109.120, 109.130 and 109.140, RSMo 1959, have been referred to in the opinion request, and each section will be quoted herein.

Section 28.100, reads as follows:

> "During each biennial session of the general assembly, the secretary of state 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 secretary of state 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."

From said section it appears that during each biennial session of the general assembly, in the presence of a joint committee of the house of representatives and senate, the secretary of state may destroy by burning, or by any other method satisfactory to the committee, such records, financial statements and public documents on file in the secretary of state's office for a period of five years or longer, determined to be of no further public use or value, except those records

and documents which may at the time be the subject of litigation or dispute.

The section is not clear as to whether the committee or the secretary of state shall make the determination as to what records shall be destroyed, nor is there any indication in the section whether such determination shall be made prior to or at the committee meeting.

While said section clearly indicates obsolete records kept five or more years, no longer of any public use or value may be destroyed, no reference is made in this or any other section for reproducing such records prior to their destruction, possibly for the reason the lawmakers may have thought it unnecessary to provide any statutory provisions authorizing the reproduction of records no longer of any public use or value.

The following statements are found in Exhibits "A", "B" and "C", respectively:

"Information from these records is periodically requested thus preventing the destruction of all records of such corporations."

"The need for periodic information from these records prevents the complete destruction of such records without making some suitable records to be used instead."

"All of these files are used as in the case of inactive corporations, to obtain information periodically requested by the public."

From these statements it is apparent the "inactive" corporation records and fictitious names records five or more years old are not obsolete public records, of no further use or value, within the meaning of Section 28.100 supra, consequently, said section is inapplicable to the records referred to in the opinion request and exhibits.

Section 109.120, RSMo 1959, reads as follows:

> "The head of any business, industry, profession, occupation or calling, or the head of any state, county or municipal department, commission, bureau or board may cause any or all records kept by such official, department, commission, bureau, board or business to be photographed,

> microphotographed, photostated or reproduced on film. Such film or reproducing material shall be of durable material and the device used to reproduce such records on such film or material shall be such as to accurately reproduce and perpetuate the original records in all details."

Section 109.130, RSMo 1959, reads as follows:

> "Such photostatic copy, photograph, microphotograph or photographic film of the original records shall be deemed to be an original record for all purposes, and shall be admissible in evidence in all courts or administrative agencies. A facsimile, exemplification or certified copy thereof, shall, for all purposes recited in sections 109.120 to 109.140, be deemed to be a transcript, exemplification or certified copy of the original."

Section 109.120 supra, authorizes the reproduction of "any or all records kept," by certain persons, including the head of any state, county or municipal department, commission, board or bureau, or official by any of the methods herein named, i.e., "to be photographed, microphotographed, photostated or reproduced on film. Such film or reproducting material shall be of durable material and the device used to reproduce such records on such film or material shall be such as to accurately reproduce and perpetuate the original records in all details."

It is obvious the secretary of state is the head of a state governmental department, or a state official within the meaning of the terms of Section 109.120 supra, and he is authorized by the section to reproduce the domestic and foreign corporation records and fictitious names records referred to in the opinion request, by any of the methods of reproduction named. Micro-filming has not been specifically named, and unless it is included within the meaning of those methods which have been named, such records cannot be micro-filmed. To determine this point, we call attention to the following definition of the word "micro-film" as given by Webster's New Collegiate Dictionary.

> "A film of small size: specif., a strip of film of standard motion-picture film size or smaller, used for keeping a photographic record of printed matter, manuscripts, etc., in a small space * * * To photograph on micro-film."

Assuming the micro-film referred to in the opinion request is of durable material and the process is sufficient to accurately reproduce and perpetuate the records in all details, as required by the statute, and also bearing in mind the above quoted definition of the word "micro-film", it is believed the reproduction of original records by said process is authorized by Section 109.120 supra.

Therefore, in view of the foregoing, and in answer to the first part of the first inquiry, it is our thought that Sections 109.120, and 109.130 supra, authorize the secretary of state to micro-film the "inactive" domestic and foreign corporation records, and fictitious names registration records five or more years old, and to preserve the reproductions as original records in his office.

The latter part of the first inquiry, as to whether or not the records from which the micro-films will have been made, may be destroyed, remains to be discussed. The authority conferred on the secretary of state by this section does not in and of itself confer power on him to destroy records after they have been micro-filmed.

Section 109.140, RSMo 1959, provides when records from which reproductions have been made may be stored, disposed of, or destroyed and reads as follows:

> "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."

After the micro-filming of the "inactive" domestic and foreign corporation records, and the fictitious names registration records on file in his office for five or more years has been accomplished by the secretary of state, he shall place the reproductions in conveniently accessible files, making satisfactory provisions for the examination and use of the reproductions, in accordance with the provisions of

above quoted section. Thereafter, the secretary of state may certify these facts to the governor of Missouri, who is empowered to authorize the disposal, archival storage or destruction of the records from which micro-films were made. In the event the governor orders such records destroyed, the secretary of state may then proceed to destroy them.

It is believed that the answer to the second inquiry has been given in the preceeding paragraph answering the latter part of the first inquiry.

The micro-filming of the records of "inactive" domestic and foreign corporations, and the preservation of the reproductions as original records was considered fully in our discussion of the first inquiry. Since there is no difference in the method of reproduction and preservation of domestic and foreign corporation records by micro-filming, in view of the foregoing, and in answer to the third inquiry, it is our thought that it will be necessary to micro-film and preserve the reproductions of the articles of incorporation and all amendments of foreign corporations, regardless of the fact such original corporate records are on file in the various states where such corporations were organized, and only certified copies of such records are on file in the office of the secretary of state.

CONCLUSION

Therefore, it is the opinion of this office the secretary of state of Missouri, is authorized, under provisions of Sections 109.120 and 109.130, RSMo 1959, to micro-film permanent records in his office, of articles of incorporation, with amendments thereto, of all "inactive" domestic and foreign business corporations, and also permanent records of fictitious names registrations, five years or more old, and to deem the reproductions thereof as original records.

It is further the opinion of this office said micro-filmed reproductions shall be placed in conveniently accessible files, with adequate provisions made for their preservation and examination, in accordance with the provisions of Section 109.140, RSMo 1959, which facts, the secretary of state may certify to the governor of Missouri. If the governor shall order the records from which the reproductions were made, destroyed, as authorized by the section, the secretary of

state may then destroy such records.

The foregoing opinion, which I hereby approve, was prepared by my assistant Paul N. Chitwood.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

PNC:vm