

CIRCUIT COURT:  
OLD RECORDS:  
Storage of

Old circuit court witness books, minute books, transcripts of judgments and transcripts on appeal are records belonging to office of the circuit clerk, and shall be kept at clerk's office within meaning of Sec. 483.065 RSMo 1949, and cannot be removed except in case of danger from invading enemy as provided by Sec. 483.070, RSMo 1949. To provide additional space for more current records, clerk may remove said old circuit court witness books, minute books, transcripts of judgments and transcripts on appeal from their usual places in his office and store them in another room of same office without violating Sections 483.065 and 483.070, RSMo 1949, if right of access and control over storage room is in clerk only, and room is not used jointly by clerk and other county officials.

March 10, 1961



Honorable Richard E. McFadin  
Prosecuting Attorney  
Clay County  
Liberty, Missouri

Dear Mr. McFadin:

This is to acknowledge receipt of your recent request for a legal opinion of this office, which reads as follows:

"Our office has had numerous requests from different county officials concerning the legality of storing old books, records, etc. outside of their offices in order that they may have more room for more current records.

"My last request, made October 15, 1960 was from the Circuit Clerk, Mr. Clifford G. Hall, for information on the feasibility of storing some of their old witness books, minute books and transcripts which have not been used in the past 15 to 50 years, in some other place other than that of his office.

"I would appreciate having a opinion on this matter so that I may so advise Mr. Hall and other County officials of the correct procedure."

We understand the inquiry to be whether or not the circuit clerk of your county is authorized to remove old circuit court witness books, minute books and transcripts from his office and store them elsewhere. We note your statement that these old records have not been used in the past 15 to 50 years.

The inquiry fails to indicate the kind of transcripts to which it refers, but for the purposes of our present discussion

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it will be assumed the reference is to transcripts of judgments coming from other courts and which transcripts may be filed with the circuit clerk, and transcripts on appeal to which further reference will be made in the course of our discussion. All statutory references herein are to RSMo 1949, unless otherwise stated.

Section 476.010, enumerates the courts of record of Missouri including circuit courts, consequently, Sections 483.065 and 483.070 referred to later in our discussion, are applicable to clerks of circuit courts.

Chapter 483, RSMo 1949, is entitled "Clerks of Courts of Record and Court Records". It deals generally with clerks of all courts of records and its provisions are fully applicable to clerks of circuit courts.

Section 483.065, provides where the office of a clerk of a court of record and such clerk's records shall be kept. Said section reads as follows:

"Each clerk shall keep his office at such places as the court shall direct, not to be more than two hundred yards from the courthouse or permanent place of holding the court of which he is clerk, and shall there keep the records, papers, seal and property belonging to his office and transact his official business."

Section 483.070 provides when the clerk of a court of record may remove the official records from his office, and reads as follows:

"In case of danger from an invading enemy any clerk may remove the records, papers and other things appertaining to his office to some secure place until the danger is removed."

From the foregoing, it is readily seen that circuit court witness books, minute books and transcripts of judgments and transcripts on appeal, all records, papers and property belonging to his office within the meaning of Section 483.065, supra, and said records, papers and property are to be kept at the office of the clerk, as provided by the section.

Section 483.070, supra, authorizes the clerk to remove the

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records, papers and other things appertaining to his office, to a more secure place when there is danger from an invading enemy, and then only for the duration of such danger. After the danger has ended, the clerk shall return said records, books and papers to his office.

Therefore, the circuit clerk cannot remove old circuit court witness books, minute books, transcripts of judgments and transcripts on appeal from his office and store them elsewhere, in order to provide space for more current records in his office. By this statement we do not mean to infer that further consideration, of any methods by which the old records may be taken from their present location and stored in some other location is precluded. Such a meaning was never intended, and it is our purpose to discuss a method during the remainder of this opinion by which the desired results implied by your inquiry may be legally accomplished. We shall attempt to show that such old circuit court witness books, minute books, transcripts of judgments and transcripts on appeal may be taken from their present location in the clerk's office and stored, without removing them from said office, in order to make space available for more current records.

In this connection it is necessary to consider what is meant by an "office" and particularly as the definition applies to the "office" of the circuit clerk.

Webster's New International Dictionary, 2nd Edition, defines the word "office" to be:

"The place where a particular kind of business or service for others is transacted; a house, room, or apartment in which public officers and others transact business; the building, room or department in which the clerical work of an establishment is done; a countinghouse; the room, etc., in which business or work of some particular department of a large concern or institution is carried on or from which it is directed as, the register's office; a lawyer's office; the office of a school or hospital; freight office."

In the case of *Bigham v. State*, 20 SW 577, the Criminal Court of Appeals of Texas, reviewed the case in which the defendant was convicted of burglarizing the sheriff's office. Among other matters before the court was the specific objection that the indictment did not charge a house had been burglarized and was totally defective in not using the precise words of the statute and in alleging the

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sheriff's "office" was a house. In discussing the objection, and in overruling same the court said at l.c. 577:

"An 'office' as defined by Webster is 'a house or apartment in which public officers and others transact business; as a register's office, a lawyer's office.' A 'vault' by the same authority is 'a cellar'. The indictment alleges the breaking and entry into the sheriff's office, and also into the vault situated in said office \*\*\* we think the place described in the indictment as being burglarized was necessarily a 'house' as defined in the Code."

From the foregoing definition of the word "office" as related to our present discussion, it is apparent that the office of the clerk of the circuit court is a place where the clerk may ordinarily be found during business hours, where he keeps his official records, performs certain statutory duties and provides certain services for those of the general public legally entitled to same.

No Missouri statutes provide that the clerk's office shall be located in a certain building or buildings and shall consist of a certain number of rooms with a total floor space of a given number of square feet. The only statutory restriction as to the location of the clerk's office is that found in Section 483.065 supra, requiring the clerk to keep his office at such place or places as the court may direct "not more than two hundred yards from the courthouse or permanent place of holding court of which he is clerk."

In the absence of any statutory prohibition, the circuit clerk's office may consist of one or more rooms, as the necessity of each individual case may require. If more than one room is used for the clerk's office, such rooms are not required to be connected or to be located on the same floor or part of the same building. While an arrangement of this kind might be impractical, or inconvenient, the office rooms may be disconnected, located on the same or different floors, in the same or different parts of one building, or some rooms may be located in one building and some in another, so long as each room is within the statutory distance from the circuit court room.

If the office of the circuit clerk of your county consists of more than one room, and each room is located not more than two

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hundred yards from the room in which circuit court is usually held, and each room is one to which the clerk has exclusive access and control and it is not used jointly with any other county official, it is our thought that the clerk may take the old circuit court witness books, minute books, transcripts of judgments and transcripts on appeal mentioned above, from the places in which they are kept in the clerk's office and store them in another location in the same office, in order to provide available space for more current records.

This procedure might serve to accomplish the desired results, and would be proper under the circumstances. None of the old records would be removed from the office, and such procedure would not constitute a violation of Sections 483.065 and 483.070, supra. However, care must be taken to store the records in a place conveniently located, and where they will be as readily available to the public as the place from which they were taken.

#### CONCLUSION

Therefore, it is the opinion of this office that old circuit court witness books, minute books, transcripts of judgments and transcripts on appeal are records, papers and property, belonging to the office of the clerk of the circuit court, which shall be kept at the clerk's office, within the meaning of Section 483.065, RSMo 1949, and which cannot be removed therefrom, except in case of danger from an invading enemy, as provided by Section 483.070, RSMo 1949.

It is further the opinion of this office, that for the purpose of providing additional space for more current records, the circuit clerk may remove said old circuit court witness books, minute books, transcripts of judgments and transcripts on appeal from their usual places in his office and store them in another room in the same office if the right of access to and control over said office storage room is in circuit clerk only, and such room is not used jointly by the circuit clerk and other county officials, without violating the provisions of Sections 483.065 and 483.070, RSMo 1949.

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

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

PNC:vm