

RECORDS:
PUBLIC RECORDS:
DESTRUCTION OF RECORDS:

Definition of public records and
procedures for microfilming and
destruction.

October 4, 1963



OPINION NO. 256

Mr. William L. Wyss, Director
Feed and Seed Division
Department of Agriculture
Jefferson City, Missouri

Dear Mr. Wyss:

This is in answer to your letter of June 11, 1963,
requesting an opinion from this office, which letter reads
as follows:

"We have a letter from Mr. Thad Fife,
Director of Safety and Fire Prevention,
stating that the files from the emergency
hay program which was in progress in 1952,
1953, and 1954 constitute a fire hazard
in their present location. We would like
to know whether or not it would be legally
proper for us to destroy these files. As
you may remember, this was a joint state
and federal drought emergency program.
Occasional reference to these files from
the standpoint of federal audits come up;
however, our information is that these
records are on file in the Comptroller's
Office on microfilm.

"If it is proper that these records be
destroyed, we should like to do so.
As a consequence, we would like to have
your opinion as to the legality of such
action."

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In answering your question, we first determine whether the files from the emergency hay program are public records. In this connection, we refer to the case of State v. Henderson, 169 SW2d 389, in which the Court discussed what documents filed in public offices are public records and, at l. c. 392, said:

"[2] 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; Robinson v. Fishback, 175 Ind. 132, 93 N.E. 666, L.R.A. 1917B, 1179, Ann. Cas. 1913B, 1271; State ex rel. Eggers v. Brown, 345 Mo. 430, 134 S.W.2d 26."

Again, in the case of Disabled Police Veterans Club v. Long, 279 SW2d 220, the Court defined the term "public records" and, at l. c. 223, the Court said:

"[6] Independently of the statute the term public records covers not only papers expressly required to be kept by a public officer but all written memorials made by a public officer within his authority where such writings constitute a convenient, appropriate or customary method of discharging the duties of the office. International Union, etc. v. Gooding, 251 Wis. 362, 29 N.W.2d 730, 735; Conover v. Board of Education, etc. 1 Utah 2d 375, 267 P. 2d 768, 770; People v. Shaw, 17 Cal. 2d 778, 112 P.2d 241, 259."

Under these definitions given to public records by the Court, it would appear that at least a substantial portion of the files from the emergency hay program would constitute public records because they would be written memorials made by a public officer within his authority, and the files would constitute a convenient, appropriate and customary method of discharging the duties of the officer.

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It may well be that a portion of the files would not come within this definition of public records. The portion of the files which were not public records could be destroyed. This office is in no position to make a determination as to which portions of the files would or would not constitute public records. Such a determination must be made in the first instance by the public officer in charge of the records and must be left to his discretion.

As to that portion of the files which would constitute public records, the general rule that such records should be preserved would apply. This rule is found in 45 Am. Jur., Records, Section 12, page 425, as follows:

"Public records and documents are the property of the state and not of the individual who happens, at the moment, to have them in his possession, and when they are deposited in the place designated for them by law, there they must remain, and can be removed only under authority of an act of the legislature and in the manner and for the purpose designated by law. The custodian of a public record cannot destroy it, deface it, or give it up without authority from the same source which required it to be made.* * *"

In accordance with this general rule, the records could be destroyed only under authority of an act of the Legislature. Such legislative authority for destruction of the records is found in Sections 109.120 and 109.140, RSMo 1959, the applicable portions of which sections, as amended by Laws of 1963, House Bill No. 142, read as follows:

"109.120. Records reproduced by photostatic process--cost--marginal releases prohibited

1. The head of any business, industry, profession, occupation or calling, or the head of any state, county or municipal

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department, commission, bureau or board, may cause any and all records kept by such official, department, commission, bureau, board or business to be photographed, microphotographed, photostated, or reproduced on film and the judges and justices of the several courts of record within this state may cause all closed case files more than five years old 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 the records on the film or material shall be such as to accurately reproduce and perpetuate the original records in all details."

"109.140. Reproduction of original records--
disposal or destruction

1. When the photostatic copies, photographs, microphotographs or reproductions on films are placed in conveniently accessible files and provisions made for preserving, examining and using them, the 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 may authorize the disposal, archival storage or destruction of the records or papers from which the photographic copies were made."

In your letter you state that it is your information that the records are on microfilm in the comptroller's office. In order to be in compliance with the procedures set forth in the statutes quoted above, it must be ascertained that the records have been reproduced on the microfilm and placed in conveniently

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accessible files. Provisions must be made for preserving, examining and using them. When such has been done, the Commissioner of Agriculture, as the head of the Missouri Department of Agriculture, should certify such facts to the Governor. After receiving such certification, the Governor may authorize the disposal, archival storage or the destruction of the records and files from the emergency hay program.

CONCLUSION

It is therefore the opinion of this office that at least a substantial portion of the files from the emergency hay program now held in the Missouri Department of Agriculture are public records and must be preserved. It is proper for microfilm copies to be made of such public records and provisions made for preserving, examining and using them. When the head of the State Department of Agriculture has certified such facts to the Governor, the Governor may authorize the disposal, archival storage or destruction of such records.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Wayne W. Waldo.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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