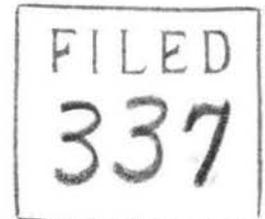


PUBLIC RECORDS: The recorder of deeds has the authority  
RECORDER OF DEEDS: and duty to determine whether instruments  
MICROFILMING OF RECORDS: entitled to be recorded in his office are  
to be recorded by making photographic  
copies of such instruments which shall be  
bound, paged and indexed in record books  
pursuant to Section 59.410 RSMo 1959, or whether such instruments  
are to be recorded by means of microfilm or other mechanical process  
pursuant to Section 109.120, RSMo Cum. Supp. 1965.

OPINION NO. 337

August 22, 1967

Honorable Harry C. Raiffie  
State Representative, 82nd District  
City of St. Louis  
4151 Delmar  
St. Louis, Missouri 63112



Dear Mr. Raiffie:

This office is in receipt of your recent request for an official opinion. You thus state your request:

"I would like an opinion regarding Section 59.410, RSMo, as it applies to the records kept in the Recorder of Deeds Office and whether or not they must be bound, paged and indexed whether they are photostatic copies or not. I would also like to know if any of the language in this Section has been repealed.

"Further, I would like to know what affect if any Section 109.120, Part 3, 1963 Cum. Supp., RSMo, has on the above statute."

Section 59.410 RSMo, is as follows:

"Wherever the statutes require deeds, mortgages, conveyances, deeds of trust, bonds, covenants, documents, marriage contracts, certificates of marriage, commissions, official bonds, statements, records, plats, surveys, schedules, papers, patents, or other instruments of writing

Honorable Harry C. Raiffie

to be recorded, the making of photographic copies of such deeds or other instruments of writing shall be deemed recording within the meaning of this chapter. Such photographic copies shall be bound, paged and indexed wherever it is so provided for deeds or other instruments recorded by hand, and such photographic copies when bound together shall be deemed record books within the meaning of this chapter."

Paragraph 3 of Section 109.120 RSMo Cum. Supp. 1965, is as follows:

"When any recorder of deeds in this state is required or authorized by law to record, copy, file, recopy, replace or index any document, plat, map or written instrument, he may do so by photostatic, photographic, microphotographic, microfilm, or similar mechanical process which produces a clear, accurate and permanent copy of the original. The reproductions so made may be used as permanent records of the original. When microfilm or a similar reproduction is used as a permanent record by recorder of deeds, duplicate reproductions of all recorded documents, indexes and files required by law to be kept by him shall be made and one copy of each document shall be stored in a fireproof vault and the other copy shall be readily available in his office together with suitable equipment for viewing the filmed record by projection to a size not smaller than the original and for reproducing copies of the recorded or filmed documents for any person entitled thereto. In all cases where instruments are recorded under the provisions of this section by microfilm, any release, assignment or other instrument affecting a previously recorded instrument by microfilm may not be made by marginal entry but shall be filed and recorded as a separate instrument and shall be in a separate book, cross-indexed to the document which it affects."

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Prior to 1917 the manner of recording instruments was "by writing them word for word, in a fair hand." In Laws 1917, p. 441, the legislature provided that the making of photographic copies of instruments shall be deemed recording and required such photographic copies to be bound, paged and indexed as set forth above in Section 59.410.

Authorization to record instruments by microfilm or similar mechanical process was first given by the legislature in 1945, Laws 1945, p. 1427. In 1963 this authorization was expanded by an amendment expressly providing that any recorder of deeds may record written instruments by microfilm or similar mechanical process as set forth in Section 109.120 quoted above.

It is to be observed that the legislative grant of power to the recorder to make photographic copies under Section 59.410, was not repealed or diminished when the legislature enacted Section 109.120. Thus, the enactment of Section 109.120 effected no change in Section 59.410. It appears therefore, that by the enactment of Section 109.120, the legislature intended to make available an alternative method of recording instruments, but it placed upon the recorder the sole responsibility for selecting which of these methods are to be followed in performing the duties of his office.

Apparently the question whether the recorder may be required to adopt a particular method of recording has never been raised in Missouri and we have found no cases where it has been considered by Missouri courts. However, the question has been considered by the courts in other jurisdictions.

In *Town of Bennington v. Booth*, 140 A. 157, the Supreme Court of Vermont held that the selectmen of the town of Bennington had no express power to require the town clerk, who kept his records in a lawful manner, to conform to their ideas as to what method he should use, and that the selectmen had no right to notify the clerk to refrain from the use of photographic recording. To the same effect is *People v. Haas*, 142 N.E. 549, 551; here the Supreme Court of Illinois stated:

"The recorder of deeds of Cook County is a county officer . . . . Every such officer, not only has the authority, but is required by law, to exercise an intelligent discretion in the performance of his official duties. The law requires him to record certain instruments

Honorable Harry C. Raiffie

in a well-bound book, but it does not require him to record them by any particular method. As long as the method adopted by him is accurate and durable, he has performed his duty. While the courts can compel him to record instruments entitled to be recorded in well-bound books, they have no right to compel him to record them in a particular way.  
\* \* \* "

CONCLUSION

It is the opinion of this office that the recorder of deeds has the authority and duty to determine whether instruments entitled to be recorded in his office are to be recorded by making photographic copies of such instruments which shall be bound, paged and indexed in record books pursuant to Section 59.410, RSMo 1959, or whether such instruments are to be recorded by means of microfilm or other mechanical process pursuant to Section 109.120, RSMo Cum. Supp. 1965.

The foregoing opinion, which I hereby approve, was prepared by my assistant L. J. Gardner.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General