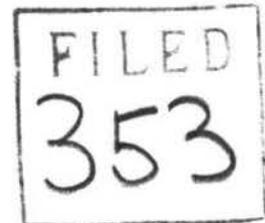


PUBLIC RECORDS:
RECORDER OF DEEDS:
MICROPHOTOGRAPHING AND
MICROFILMING OF RECORDS:
DUPLICATES: WHEN FILED:

It is the opinion of this office that when a recorder of deeds records all legally recordable documents by making and filing photostatic or photographic copies of said documents as provided by Section 109.120(3), RSMo. Cum. Supp. 1967, one copy of each original document shall be made. When the recorder records documents by making and filing microphotographic or microfilm copies, duplicate copies must be made.

OPINION NO. 353-1968

September 19, 1968



Honorable Thomas D. Graham
State Representative
District No. 122
312 East Capital Avenue
Jefferson City, Missouri 65101

Dear Representative Graham:

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

"I request an opinion with respect to Section 109.120, RSMo. as appears in the 1967 Supplement. Paragraph 3 of said statute authorizes a recorder of deeds to record certain instruments by photostatic, photographic, microfilm or similar mechanical process.

* * *

"I would like to know whether the 'similar reproduction' referred to in the statute applies to all methods listed therein, so that duplicate reproduction must be made as well of all photostats, photographs, microphotographs, etc. as of microfilm."

Section 109.120(3), RSMo. Cum. Supp. 1967, referred to in the opinion request reads in part as follows:

"3. 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,

Honorable Thomas D. Graham

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 * * * "

The above quoted section authorizes the recorder of deeds to use any one of the methods therein named, as he may choose for recording all documents legally recordable by him.

The inquiry has not been made, nor shall we attempt to state all those methods which might be employed by him in recording, not specifically mentioned but would be included within the meaning of the term "or a similar reproduction". We shall have more to say about this matter later in our discussion.

In an opinion of this office written for Honorable Harry C. Raiffie, State Representative, 82nd District, 4151 Delmar Boulevard, St. Louis, Missouri, on August 22, 1967, it was concluded 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. A copy of said opinion is enclosed.

In view of the conclusion reached in the enclosed opinion, when a recorder of deeds determines to record all legally recordable documents in his office by use of photostating or photographing such documents, the reproduction thus taken by him for permanent records shall be placed in bound, paged and indexed books. Neither Section 59.410, RSMo. 1959, or Section 109.120, RSMo. Cum. Supp. 1965 referred to in the opinion request provides the recorder must make duplicate photostatic or photographic reproductions.

Honorable Thomas D. Graham

It will be recalled that Section 109.120(3) supra makes special reference to microfilm and similar reproductions, which portion of the section we wish to emphasize by quoting:

" * * * When microfilm or a similar reproduction is used as a permanent record by the recorder of deeds, duplicate reproductions of all recorded documents, indexes and files required by law to be kept by him shall be made * * * "

When the recorder uses microfilm to record documents, there is no doubt as to what his duty is, as noted from the above quoted excerpt of Section 109.120(3) supra, he shall file duplicate copies.

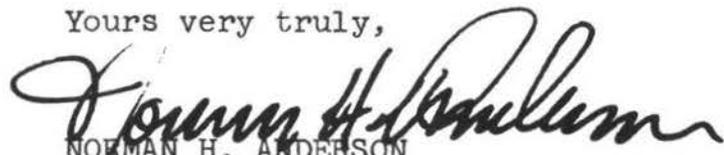
As indicated above, the phrase "or a similar reproduction" is used in Section 109.120(3) instead of specifically naming all the methods of making reproductions which were intended to be included within this class. The process of making microphotographs is very similar to that of making microfilm. Each kind of said reproduction is so small in size that it cannot be read or viewed without being magnified. When reproductions of this kind are used for permanent records, it is the recorder's duty to provide necessary equipment in his office in order for the public to view the records. For these reasons, it is believed to be the legislative intent and purpose in enacting this section to include microphotographs within the classification of "similar reproductions"; and when the recorder uses microfilmed or microphotographic reproductions for recording purposes, he shall make duplicates of all documents so recorded, and shall store one copy in a fireproof vault. The other copy shall be readily available in his office with suitable projection equipment for viewing to a size not smaller than the original document and for reproducing copies of the recorded document when required.

CONCLUSION

Therefore, it is the opinion of this office that when a recorder of deeds records all legally recordable documents by making and filing photostatic or photographic copies of said documents as provided by Section 109.120(3), RSMo. Cum. Supp. 1967, one copy of each original document shall be made. When the recorder records documents by making and filing microphotographic or microfilm copies, duplicate copies must be made.

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

Yours very truly,


NORMAN H. ANDERSON
Attorney General

Enc. Opinion No. 337-67, Raiffie