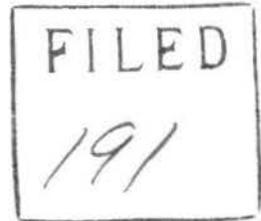


COUNTIES:
PROBATE COURTS:

County must bear expense of authorized photographic reproduction and destruction of probate court records.

OPINION NO. 191

August 7, 1969



Honorable Byron C. Kinder
Prosecuting Attorney
Cole County
Jefferson City, Missouri 65101

Dear Mr. Kinder:

This official opinion is issued pursuant to your request of recent date in which you ask whether the probate court has authority to order the photographic reproduction of certain files and records, with destruction of the originals, and whether the county court is obliged to pay the cost thereof.

Section 109.120, RSMo Supp. 1967, provides in part as follows:

" . . .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."

This statute deals with the cost of photographic reproduction in express terms by providing:

"* * *The cost of photographing, microphotographing, photostating or reproducing on film of closed files of the several courts of record as provided herein shall be chargeable to the county and paid out of the county treasury wherein the court is situated. * * *"

Section 109.140(2), RSMo Supp. 1967, provides:

"* * *The supreme court may authorize the disposal, archival storage or destruction of its own closed court files more than five years old and such files of the several courts of record when the photostatic copies, photographs, microphotographs or reproductions on film are placed in conveniently accessible files and provisions made for preserving, examining and using them."

Article V, Section 17 of the Missouri Constitution provides that the probate courts are courts of record.

By order of September 20, 1966, 405 SW 2d xix, the Supreme Court authorized the disposal, archival storage or destruction of files of probate courts in which no action has been taken for ten years, provided that the files have been

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photographically reproduced in compliance with Section 109.120, RSMo Supp. 1967, and that the reproductions have been made readily available. The order goes on to provide as follows:

"All action taken with regard thereto shall be under the authority and direction of the Judge of each of the Probate Courts, and any rules, or methods of preservation, and examination and use, or fees charged for reproducing, shall be fixed by such probate court."

The sense of the order is that the probate court is to have the discretion to determine which files are to be reproduced and destroyed, and what process of reproduction is to be used. The order of the Supreme Court merely gives authority for destruction. It does not direct the destruction of anything.

The Supreme Court's order says nothing about the cost of reproduction or destruction. Two statutory provisions in addition to Section 109.120, RSMo Supp. 1967, supra. are material. Section 476.270, RSMo provides:

"All expenditures accruing in the . . . probate courts, except salaries and clerk hire which is payable by the state, shall be paid out of the treasury of the county in which the court is held in the same manner as other demands."

Section 481.060 RSMo provides:

"Every probate court shall have a seal of office, of some suitable device, the expense of which, and the necessary expense incurred by said court for books, stationery, furniture, fuel and other necessaries, shall be paid by the county."

The above statutes, together with the Supreme Court order, show a clear pattern. The probate court may decide whether any files or records are to be reproduced and destroyed, what files or records are to be so treated, and the reproductive process to be used. No records may be destroyed except those authorized by the Supreme Court. With this qualification, the probate court has complete discretion. The expense must be borne by the county. The statutes clearly say so.

Situations in which a county must pay expenses deemed necessary by the probate court are not at all unusual. When the probate judge certifies that postage stamps are necessary, the county must bear the cost. Saylor vs. Nodaway County, 159 Mo. 520, 60 SW 1057 (1901). The probate judge may decide that the business of his court requires a separate telephone in the courtroom, and the county must pay the cost. Hale vs. Texas County, 178 SW 865 (1915); Motley vs. Pike County, 232 Mo. 42, 135 SW 39 (1911). The matter of reproduction and destruction of files and records relates to the efficient use of office space and to the storage of court files, and the probate court has full authority to determine what is necessary.

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CONCLUSION

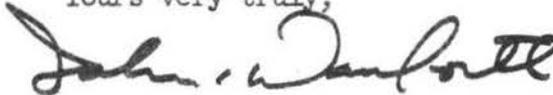
It is the opinion of this office:

(1) That each probate court has the discretion to order the destruction of probate files in which no action has been taken for ten years, so long as the files are reproduced in compliance with Section 109.120, RSMo Supp. 1967, and the reproductions are made readily accessible.

(2) That the county must bear the expense of reproduction in a manner authorized by the probate court, and of destruction, if the probate court orders any such reproduction and destruction.

The foregoing opinion, which I hereby approve, was prepared by my Special Assistant, Charles B. Blackmar.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General

CBB: mlz