ASSESSOR:
COUNTY ASSESSOR:
PUBLIC RECORDS:

Card Index system kept by assessor belongs to county.

October 23, 1969

OPINION NO. 450

FILED
450

Honorable Thomas B. Burkemper
Prosecuting Attorney
Lincoln County Court House
Troy, Missouri 63379

Dear Mr. Burkemper:

This is in response to your request for an opinion from this office as follows:

> "The assessor of Lincoln County, Missouri, a third class county, elected in November, 1964, and taking office in September, 1965, prepared and started work on a set of cross-index cards which substantially eased the work of the assessor. This set of cross-index cards was not required to be kept up by the assessor under the law. Prior to 1967 all of the work done on that set of cross-index cards, if any, was done at the expense of the assessor out of his own funds Prior to his taking office, there was a card system in use, which card system was not current, but which had been maintained at the expense of the assessor in office.
>
> "In the 1967 budget at the request of the assessor the County Court budgeted $1,000.00 for 'making index card filing system' with the understanding that previous indexes were out of date and needed to be brought to date. Subsequently the sum of $1,000.00 was paid out in wages to the office help of the assessor by the County during the year 1967.

> "Subsequent to the year 1967 the assessor in office claims to have paid out of his own funds a total sum of $2,896.52 in wages for various ladies to help bring up and keep the system to date. The card system now contains over 10,000.00 cards.
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> "In September, 1969, a new assessor took office and reported that that portion of the cross-index card system containing an alphabetical listing of property by owner's name was not in the office.
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> "The assessor leaving office in September, 1969, claims title to the cross-index filing system. The County also claims the system.
>
> "Please advise who is the rightful owner of the system. If you should find that the ex-assessor is the rightful owner, then who is the owner of the $1,000.00?"

Chapter 109 RSMo, 1959, governs the custody and preservation of public records. Section 109.010 provides:

> "If any civil or military officer having any record, books or papers appertaining to any public office or any court shall resign, or his office be vacated, he shall deliver to his successor all such records, books and papers."

We are unable to find appellate court decisions in this state involving this question. Absent a controlling decision by a court of this state, a court decision in another state is persuasive. Whitehorn v. Dickerson, 419 S.W.2d 713.

The general rule of law that applies to the ownership of public records is stated in 76 C.J.S. Records §1 as follows:

> "A written memorial of a transaction in a public office, when made by a public officer, becomes a public record belonging to the office, and not his private property."

In Robison v. Fishback, 175 Ind. 132 (1911) 93 N.E. 666, the county treasurer abandoned a card index system that had been in use prior to the time he assumed office and established a new card index at his own expense of about $3,000.00, which he kept up and maintained during his term of office and upon going out of office when his term expired, he claimed the cards and cases as his individual property and the right to remove them. In discussing the ownership and right to remove the cards and cases the court stated l.c. 136:

"The real point in this case turns on the question whether the particular cards and cases have become so essential to the conduct of the office that appellants, in installing them, must be considered as having intended that they should become so much a part of the indispensable accessories of the operation of the office that the public interest requires that they be not removed. It appears from the record that the former system of card indexing was abandoned. Had that been kept up by appellants at their own expense, and for their own convenience, though less efficient than the plan installed, though possibly involving quite as much labor as the new scheme, it could hardly be claimed that appellants could remove it, or even those cards added by their labors or at their own expense.

"This index is not required by any specific law, and it is wholly optional with treasurers whether they keep indexes to these records; but they are so far authorized that the public authorities might contract and pay for their making as conveniences for the use of the officers and the public, and if so procured, while they may not in the strict sense be public records, they are undoubtedly authorized to be made and kept. They are not less public by reason of being made by an officer in the course of his administration of the office. The public have a direct interest in them, not only during the term of office of the incumbent, but indefinitely. State, ex rel., v. Shutts (1904), 161 Ind. 590; State, ex rel., v. Flynn (1903), 161 Ind. 554; Board, etc., v. Mitchell (1892), 131 Ind. 370, 15 L. R. A. 520; Hoffman v. Board, etc. (1884), 96 Ind. 84; Garrett v. Board, etc. (1884), 92 Ind. 518; Hubler v. Board, etc. (1898), 19 Ind. App. 464. It has been held that an index is simply a facility for learning the contents of a record, but not a part of the record itself, unless required by the law to be kept. Bishop v. Schneider (1870), 46 Mo. 472, 2 Am. Rep. 533; Catham v. Bradford (1873), 50 Ga. 327, 15 Am. Rep. 692; Curtis v. Lyman (1852), 24 Vt. 338, 58 Am Dec. 174. These cases arose upon a conflict of interest between third parties, because of the failure of an officer to keep an index, owing to which fact some of them were misled in cases where no index was required as a part of the record.

* * * *

"The following statement in the case of Coleman v. Commonwealth, supra, though obiter, so aptly phrases the matter as to commend itself to our approval and judgment, at least as applied to the facts in this case. 'Whenever a written record of the transactions of a public officer in his office, is a convenient and appropriate mode of discharging the duties of his office, it is not only his right but his duty to keep that memorial, whether expressly required so to do or not; and when kept it becomes a public document--a public record belonging to the office and not to the officer; it is the property of the state and not of the citizen, and is in no sense a private memorandum.'

"It is said that a public record is one required by law to be kept, or necessary to be kept, in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said or done. Miller v. City of Indianapolis (1890), 123 Ind. 196; Commonwealth v. Rodes (1833), 1 Dana (Ky.) *595; Cyclopedic Law Dict.

"The evidence in this case is all to the point that the indexes are indispensable to the discharge of the duties of the office.

"It is said in the case of People v. Peck (1893), 138 N. Y. 386, 34 N. E. 347, 20 L. R. A. 381, involving the question of the collection of statistical matter from which compliations are made and reports required to be made: 'He is not to collect the facts merely to enable him to discharge his duty, but in the discharge of a duty.' Here, the treasurer did not prepare the indexes in the discharge of a duty imposed upon him to make them, but to aid him and those succeeding him to discharge the duties of the office; but in the discharge of his duties he did invest the office with facilities for the discharge thereof which are highly essential in the efficient discharge thereof, and in which the public, whose servant he was, are deeply interested. The injury to the public from their removal would be greater than the benefit accruing to appellants, and we think it would be inequitable, when appellants have themselves created the situation, to allow them to disturb it. Because appellants were prevented from removing the cases and cards, it does not fol-

> low that their property is taken without just compensation, nor are they deprived of their property without due process of law. They cannot complain of a condition of their own creating."

This case was cited with approval by our Supreme Court in State ex rel. Kavanaugh v. Henderson 169 S.W.2d 389, a case involving the inspection of public records.

CONCLUSION

It is the opinion of this department that the card index system kept by the assessor of Lincoln County in connection with his work as county assessor and in the discharge of his duties as county assessor is a public record belonging to the office and is not his private property.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,

John C. Danforth

JOHN C. DANFORTH
Attorney General