

March 29, 1971

OPINION LETTER NO. 228

Answer by Letter Klaffenbach

Honorable James E. Godfrey
Missouri House of Representatives
State Capitol Building - Room 308
Jefferson City, Missouri 65101



Dear Representative Godfrey:

This letter is in answer to your opinion request in which you ask:

"Would you kindly render an Attorney General's Opinion on the proposition as to whether or not a duly elected State Official can give away, transfer, or otherwise dispose of property or assets of his office without complying with the statutory provisions for the disposal of same; or, can he give away, transfer, or otherwise dispose of property or assets of his office at his pleasure?"

The obvious answer to your question as thus phrased is clearly that a state officer must comply with state statutes and that state property cannot be disposed of according to the whim of the officer in charge of such property.

In particular, however, we understand that your question is directed to the current controversy concerning the transfer of postage stamps to the State Senate by the Auditor. The facts with respect to this controversy as we understand them are that the State Auditor found stamps valued at approximately \$31,000 after he took office in January, 1971 and that he then determined that the same were in excess of the needs of his office and also concluded that he could not dispose of the stamps by return to the United States Post Office or by sale to the public. We also understand that the Auditor then conferred with the Governor on about the second day of his term of office and a joint decision was reached concluding that some of the stamps should be transferred to the State Senate and to the House of Representatives.

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It is further our understanding that, in accordance with the views of the Governor, stamps in the approximate amount of \$4,000 were transferred to the State Senate. Thereafter, we understand, the Governor called the State Auditor and requested that additional stamps be transferred to the House of Representatives.

In order to answer your question fully it would be necessary to pass upon the propriety of the transfer by the State Auditor, the propriety of the action of the Senate in accepting such transfer, and, additionally, the propriety of the action of the Governor and any other state officers who may have been involved in the transfer. In these premises it is clear that the question involves a controversy concerning the past actions of numerous officers of both the Executive and Legislative branches of the government. As such it is not a proper subject of an opinion of this office under Section 27.040 R.S.Mo. 1969, and for this reason and for the reason expressed below and because our opinion under these circumstances would serve no useful purpose we must respectfully decline to answer your question.

At the same time however we believe that the question takes on the character of mootness because we understand that the stamps have not been expended and are being held in trust by the Senate for the State Auditor pending a determination concerning ultimate disposal. Thus the stamps have not been given away or disposed of by the Auditor and we have a collateral question with respect to their disposal.

We find no statutory provision authorizing the State Purchasing Agent to transfer surplus property to the legislative branch of the state government. However, under Section 34.140 R.S.Mo. 1969 he has the power to transfer surplus from any department of the state where it is not needed to any other department where it is needed. It is therefore our view that the Auditor may declare the stamps to be surplus property for disposal by the Purchasing Agent.

Very truly yours,

JOHN C. DANFORTH
Attorney General