

March 3, 1972

OPINION LETTER NO. 98
Answer by Letter - Klaffenbach

Mr. Robert E. Myers
State Land Surveyor
Missouri State Land Survey Authority
Post Office Box 1158
Rolla, Missouri 65401



Dear Mr. Myers:

This letter is in response to your request for an opinion in which you ask:

"Section 60.590(1) RSMo 1969, states, 'On request of the authority or the state land surveyor, all city and county recorders of deeds, together with all departments, boards or agencies of state government, county, or city government, shall furnish to this authority or the state land surveyor certified copies of desired records which are in their custody. This service shall be free of cost when possible; otherwise it shall be at actual cost of reproduction of the records.'

"Some city and county recorders of deeds have, as authorized by section 109.120(3) RSMo 1969, recopied recorded documents on microfilm. Chapter 190.130 RSMo 1969, specifies that, 'Such photostatic copy, photograph, microphotograph or photographic film of the original records shall be deemed to be an original record for all purposes, and shall be admissible in evidence in all courts or administrative agencies. A facsimile, exemplification or certified copy thereof shall, for all purposes recited in sections 109.120 to 109.140, be deemed to be a transcript, exemplification or certified copy of the original.'

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"In the situation where the county recorder of deeds has made microfilm copies of the original documents and also retains the original documents, does the term 'certified copies of desired records' mean that the State Land Survey Authority can request either photocopies of the original documents or duplicate copies of the microfilm document?"

"In the event that duplicate copies of the microfilm is requested, is the term 'actual cost of reproduction of the records' the cost to make the duplicate microfilm or the cost to make the original microfilm original?"

Section 60.590, RSMo 1969 to which you refer provides in full:

"On request of the authority or the state land surveyor, all city and county recorders of deeds, together with all departments, boards or agencies of state government, county, or city government, shall furnish to this authority or the state land surveyor certified copies of desired records which are in their custody. This service shall be free of cost when possible; otherwise it shall be at actual cost of reproduction of the records. On the same basis of cost, this authority shall furnish records within its custody to other agencies or departments of state, county or city, certifying them.

"The authority may produce, reproduce and sell maps, plats, reports, studies, and records, and shall fix the charge therefor. All income received shall be promptly deposited in the state treasury."

Also, as you have indicated Sections 109.120, RSMo 1969 et seq., authorize the reproduction of original records by recorders of deeds by photostatic, photographic, microphotographic, microfilm or similar mechanical process which produces a clear, accurate and permanent copy of the original and provide that such reproductions may be used as permanent records of the originals and shall be deemed to be original records for all purposes.

With respect to the meaning of the language "actual cost of reproduction of the records" Section 1.090, RSMo 1969 provides that:

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"Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

Thus, the plain meaning of "actual cost of reproduction" in our view means simply the cost of reproducing the records and where the records are being maintained by the processes authorized under Section 109.120, such cost does not include the original cost of reproducing such records but only the cost of duplication. The fact that the legislature provided that the service "shall be free of cost when possible" indicates, in our view, that costs to the Land Survey Authority are to be kept to a minimum.

In answer to your question concerning which documents should be duplicated where the county recorder has made microfilm copies of the original records but has retained the original records, it is our view that the reproduction procedure authorized by Section 109.120 was intended to eliminate the necessity of keeping voluminous original records, and when such reproductions are used as the original record by the recorder, the reproduction becomes the permanent record and the State Land Survey Authority would be entitled to duplicates of such reproductions properly certified and with the same effect as certified copies of the original under Section 109.130.

Very truly yours,

JOHN C. DANFORTH
Attorney General