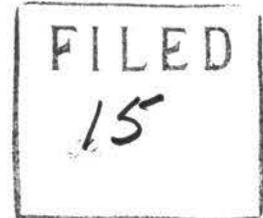


February 23, 1976

OPINION LETTER NO. 15
Answer by letter-Mansur



Honorable Frank Bild
State Senator, 15th District
c/o Senate Post Office
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Bild:

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

"Are court reporters in any way affected by the 'Sunshine Law' insofar as it might pertain to court reporters and the expunging of records?"

"Clarification is needed on whether court reporters are in any way affected by the Sunshine Law in the instance of where a defendant is acquitted of manslaughter and a transcript is ordered by an insurance company without the permission of the defendant, or in a criminal case where pre-trial motions to suppress, etc. are ordered and delivered to counsel, and subsequently the case is nolle prossed or the defendant is acquitted and the transcript used in a companion case."

The question you have submitted involves the interpretation only of Section 610.105, RSMo Supp. 1973, concerning records in criminal cases.

Section 610.105, RSMo Supp. 1973, provides as follows:

"If the person arrested is charged but the case is subsequently nolle prossed, dismissed

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or the accused is found not guilty in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records to all persons except the person arrested or charged."

You specifically inquire whether the court reporter is prohibited from furnishing a transcript of the evidence to a third person without the permission of the defendant in a criminal case after he has been acquitted or when the case is nolle prossed.

Section 610.105 provides that if a person arrested is found not guilty in the court in which the action is prosecuted, the official records pertaining to the case shall thereafter be closed records to all persons except the person arrested or charged. The question you submit is whether the record made by the official court reporter comes within the provision of this statute as an official record.

Section 485.040, RSMo, provides for the judges of the circuit court to appoint an official court reporter for the court who shall be well skilled in the art of shorthand reporting and who shall be a sworn officer of the court. Other statutory provisions require the court reporter to record certain matters in criminal proceedings. It is our opinion that the record kept by the official court reporter in a criminal case comes within the provisions of Section 610.105 as an official record pertaining to the case and thereafter shall be closed records to all persons except the person arrested or charged and acquitted.

Section 485.050, RSMo, which defines the duties of the official court reporter, provides that he shall preserve all official notes taken in said court for future use or reference and to furnish to any person or persons the transcript of all or any part of the evidence or oral proceedings upon the payment to him of the fee herein provided.

The above-statutory provision applies to both civil and criminal matters pending before the court. It is a general statute applying to both civil and criminal matters and has been in effect many years. Section 610.105 was first enacted in 1973 and applies only to criminal proceedings and appears to be in conflict with the provisions of Section 485.050.

It is the cardinal rule of statutory construction that where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together

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and harmonized if possible, with the view to giving effect to a consistent legislative policy, but, to the extent of any necessary repugnancy between them, the special law will prevail over the general statute and, where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general statute. Laughlin v. Forgrave, 432 S.W.2d 308 (Mo.Banc 1968).

It is our opinion that the provisions of Section 610.105 prevails over the provisions of Section 485.050 and that the court reporter is prohibited from furnishing a transcript of the proceedings to any person other than the defendant in a criminal case if such defendant is acquitted or the case is nolle prossed.

You also inquire as to whether the Sunshine Law affects a court reporter who furnishes to an attorney copies of motions to suppress or other documents filed in a criminal case before the case is nolle prossed or the defendant is acquitted. It is our view that the court reporter or anyone else can make copies of documents filed in a court case and deliver such documents to an attorney prior to the case's being nolle prossed or the acquittal of the defendant and that such action does not violate the Sunshine Law. However, the Sunshine Law prohibits the reporter from furnishing such documents to an attorney or anyone else except the defendant after the case is nolle prossed or the defendant is acquitted.

Yours very truly,

JOHN C. DANFORTH
Attorney General