

PROSECUTING ATTORNEY:)
RECORDS ALL DESTROYED)
IN CRIMINAL CASE:)
WHAT ACTION TAKEN:)

Where all records of conviction and sentence destroyed, prosecuting attorney should renew prosecution.

October 19, 1937.

11-6

FILED
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Honorable G. W. Rogers
Prosecuting Attorney
Ozark County
Gainesville, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of recent date in which you request the opinion of this Department. Your letter of request is as follows:

"At the May term of court in 1934, _____ was convicted on a charge of felonious assault and his punishment fixed at two years imprisonment in the State Penitentiary. At that same term of Court a motion for a new trial was filed and overruled and an appeal granted to the Supreme Court. He was given until the first day of the next term of court to file a Bill of Exceptions. The Bill of Exceptions was filed at the November term of Court in 1934. The appeal was not perfected and it was never sent to the Clerk of the Supreme Court.

"After the Bill of Exceptions was filed, the Courthouse of Ozark County was destroyed by fire and all files and records, including the judgment and sentence, were burned so there are no files, no papers, no records, nor anything else on file to show that he was ever arrested or in court. The only thing in existence at this time is the reporter's notes and his copy of the evidence which he transcribed in preparing the Bill of Exceptions.

Oct. 19, 1937.

At a recent term of our Circuit Court the Circuit Judge requested that steps be taken to restore the files and records in this case, as the matter is out of the ordinary, and as any steps taken by the State will likely be contested, I would like to have your opinion concerning the steps necessary to be taken."

Your request for an opinion presents a novel situation and we have made considerable research to ascertain what steps should be taken by you in this matter. We note that so far as the records are concerned there is nothing to show that the defendant was ever arrested or convicted of the offense of which he is alleged to be guilty. Every official step taken looking toward defendant's prosecution was destroyed in the burning of the Courthouse of Ozark County, according to your letter, and the only record of same is the Reporter's notes of evidence and the memory of man.

We have found cases where indictments or informations have been supplied where lost or destroyed but we do not seem to be able to find a similar case as yours which has reached the appellate courts and become a matter of record and precedent. We note in your letter that the Reporter's notes and his copy of the evidence which he transcribed in preparing the bill of exceptions, are preserved. We take it from your statement that no part of the record proper which was entered upon the court's records is in existence. It seems to be one of those unfortunate cases which by the destruction of the records and the passage of time has rendered it difficult to bring one charged with a crime to the bar of justice.

We do not find that any action may be taken by the appellate court for the reason that no sufficient record outlining the steps taken in the prosecution and conviction may be certified to by the Clerk of the Circuit Court of your County and filed in the appellate court. Neither do we find that any action may be taken by the Circuit Court of Ozark County for the reason that there is no sufficient record of the conviction or sentence.

Oct. 19, 1937

It is, therefore, our opinion that under the circumstances, as outlined in your letter, the prosecuting officers desiring to prosecute, may file an information or secure an indictment and renew the prosecution theretofore commenced in that county. We realize that certain difficulties and perhaps insurmountable obstacles might be encountered by the prosecuting officers in a matter of this kind. However, we deem it unnecessary for us to enumerate same in this opinion.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

CRH:EG