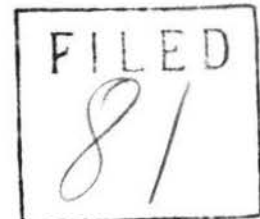


LABOR COMMISSIONER: Labor and Industrial Inspection
Department must retain reports indefinitely.

October 12, 1939

10-14



Mr. Earl H. Shackelford
Commissioner of Labor
Labor and Industrial Inspection Department
Jefferson City, Missouri

Dear Sir:

We are in receipt of your request for an opinion,
under date of October 10, 1939, which reads as follows:

"Under Section 13176 of the Revised Statutes
of Missouri, 1929, 'the title, control and
management of all personal property, books,
records, documents, office equipment, and
files of the Bureau of Labor Statistics,
the Industrial Inspection Department, are
hereby transferred to and vested in the
Department of Labor and Industrial Inspection.'
Section 13177 also refers to the same subject.

"During the course of years we accumulate
quite a file of inspector's daily cash reports,
duplicate copies of inspection certificates
and compliance orders. These forms are used
by the auditors in checking the records of
the department but after such an audit has
been made and the records cleared neither
the department or anyone else has any use
for them. Have we the authority to destroy
such inspector's daily reports, duplicate
copies of inspection certificates and com-
pliance orders, or should they be retained
in our files indefinitely?"

Section 4073 R. S. Mo. 1929, reads as follows:

"Every officer or other person having the custody of any record, paper, document or proceedings, or any will, deed or other writing, specified in either of the last two sections, who shall fraudulently take away, withdraw or destroy any such record, paper, document, proceeding, will, deed or instrument of writing filed or deposited with him, or left in his custody, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years."

The case of *People v. Peck*, 138 N. Y. 386 involved a prosecution, under an act very similar to the above. It was held there that the fact that the commissioner of statistics of labor had prepared his report did not authorize him to destroy papers giving statistical information which were filed in his office and used in preparing his report. It is our understanding that these files which you mention in your request are used, at least in a small part, in the preparation of your annual report to the Governor. That the office of the Labor and Industrial Inspection Department is a public office within the meaning of Section 4073, supra, does not admit of doubt. In *People v. Peck*, supra, it was said:

"There can be no doubt that the Commissioner is a public officer. He has a fixed term of office, a salary, and discharges duties for the public, * * * * . So here was a public officer, and a public office officially occupied by him."

In closing, the court, in *People v. Peck*, supra, said:

" * * * * the indictment was found against

them under section 94 of the Penal Code, which provides as follows: 'A person who willfully and unlawfully removes, mutilates, destroys, conceals, or obliterates a record, map, book, paper, document, or other thing filed or deposited in a public office, or with any public officer, by authority of law, is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both.' We can perceive no defect in this indictment. The facts alleged therein show the commission of a crime. As we have shown, the circulars and answers written thereon were public papers or documents. They were deposited, and also, according to the general and common understanding of the term, 'filed,' with a public officer, by authority of law, and the indictment alleges that the defendants feloniously, willfully, and unlawfully destroyed them. It matters not, as we have shown, whether this destruction took place before or after the commissioner had prepared his report.

* * * * *

CONCLUSION

It is therefore the opinion of this Department, in view of the fact that there is no statute authorizing the destruction of such papers after a specified length of time, that such should be retained in your files indefinitely.

APPROVED:

Respectfully submitted,

TYRE W. BURTON
(Acting) Attorney-General

W. J. BURKE
Assistant Attorney-General

RPCW:RW