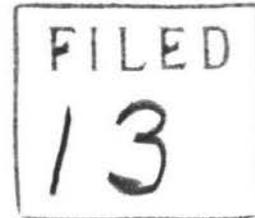


PROBATION AND PAROLE: Board of Probation and Parole has
DESTRUCTION OF RECORDS: no authority to destroy permanent
files and records of department.

February 15, 1944

Mr. Donald W. Bunker, Director
Probation and Parole
Jefferson City, Missouri



Dear Sir:

We have for attention your letter of February 9th, in which you request an opinion from this department on the question therein submitted. Your letter is as follows:

"The Board of Probation and Parole should like to have an opinion from your office regarding the following question:

"Does the Board of Probation and Parole have the authority to destroy the parole files of former inmates who have been released from parole supervision for a period of five years?

"Our reason for requesting this opinion is that the store-room where these old files are stored is no longer large enough to accommodate additional parole files. Before destroying each file we would transfer all pertinent information to a card which we have for that purpose, and such card would be considered the permanent record on the case. We have found that whenever we need to refer to the parole file of an individual who has been discharged from parole for a period of longer than five years, the only information we need is that which could be transferred to a card."

The question which you ask, "Does the Board of Probation and Parole have the authority to destroy the parole

files of former inmates who have been released from parole supervision for a period of five years?" is very general in scope and it is not clear what you mean by the "parole files of former inmates."

The Board of Probation and Parole was created by the Laws of Missouri, 1937, and the sections dealing with that board are set forth at pages 400, et seq.

The duties of said board are set forth under Section 9163, R. S. Mo. 1939, which authorizes the board to make a study of all prisoners in the penitentiary in order to determine which of said prisoners may, with safety to society, be paroled, and make a detailed individual report of such study to the Governor. After the said report has been made to the Governor he may make such orders and recommendations concerning such paroles and regulations as he may deem advisable and proper.

Under Section 9161, R. S. Mo. 1939, the board shall employ such assistants and employees as may be necessary to carry out the provisions of this article.

Under Section 9164, R. S. Mo. 1939, there is a provision for the collection of information and data, which information shall be privileged and shall not be receivable in court, and shall not be disclosed directly, or indirectly, to anyone other than the members of the Board of Probation and Parole and judges entitled under said article to receive said report, unless, and until, otherwise ordered by said board or judge.

We do not find any provision in the Board of Probation and Parole Act authorizing it to destroy any records or data that may be collected by the board, even though it may be for a prisoner who may have been released from parole supervision for a period of five years or more. Of course, the board has a certain reasonable discretion in determining what files and records are of permanent nature and should be retained for future use of the department. However, you may be the judge of what records and documents are of a permanent value and necessary to preserve a record of matters coming before your board. So long as the board retains in the files sufficient information which would reflect the disposition and authority for the recommendation to the Governor of the prisoner whose record has been referred to it for attention, we think that is all the law requires.

The general rule with reference to the destroying of public records is stated in American Jurisprudence, Vol. 5, Section 12, as follows:

"Public records and documents are the property of the state and not of the individual who happens, at the moment, to have them in his possession, and when they are deposited in the place designated for them by law, there they must remain, and can be removed only under authority of an act of the legislature and in the manner and for the purpose designated by law. The custodian of a public record cannot destroy it, deface it, or give it up without authority from the same source which required it to be made. Thus, an indictment duly filed cannot be removed legitimately by anyone, including the district attorney, except for purposes of the trial thereon, * * * * *"

There is no hard and fast rule which would govern your action in ordering the destruction of certain papers or other documents, and, in the absence of a statute authorizing their destruction, we would say that you have no such authority.

CONCLUSION

It is, therefore, our opinion that the Board, in the first instance, may determine what files and records are of permanent value and may order the destruction of insignificant and inconsequential data which may have been collected in the performance of their duty. However, records, or data, which may be a part of the permanent records should not be destroyed and the destruction of any records should be done with extreme caution.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

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