

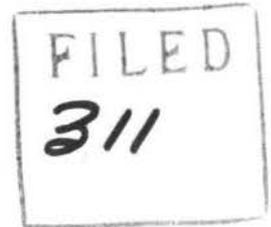
COURT RECORDS:
PUBLIC RECORDS:
SUNSHINE BILL:

With respect to Act 172, 77th General Assembly that: 1. Section 7 of the Act applies to all records of prosecuting attorneys, law enforcement agencies, and magistrate courts which pertain to the case of a person who has been arrested and charged. 2. Records required to be closed under Section 7 of the Act are not to be expunged, but they are available to courts and law enforcement agencies only for purposes of litigation and otherwise must be inaccessible to the general public.

OPINION NO. 311

November 30, 1973

Honorable Ralph L. Martin
Prosecuting Attorney
Jackson County Courthouse
415 East 12th Street
Kansas City, Missouri 64106



Dear Mr. Martin:

This official opinion is issued in response to your request for a ruling on the following question:

"Section 7 of the Act 172, First Regular Session-1973, refers to 'official records pertaining to the case' which shall be 'closed records' following a dismissal or finding of not guilty.

1. Which records are covered by the section of:

- a. The Magistrate Courts.
- b. The Prosecuting Attorney.
- c. Law enforcement agencies.

2. What is covered by the word 'closed?' For example, does it require complete expunging? Or physical separation from public records?"

As you noted in your opinion request, this Act became effective on September 28, 1973; and, as you stated, ". . . The originating law enforcement agencies, the Prosecuting Attorneys and the Courts involved, all maintain records of their investigations and proceedings. . . ."

The statute in question reads, in pertinent part, as follows:

"Section 7. If the person arrested is charged but the case is subsequently nolle prossed,

Honorable Ralph L. Martin

dismissed 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."

We answer your questions as follows:

1. We would point out that, while the statute as a whole refers to "public records," the section in question speaks of "official records." "Official records" are not defined in the statute. "Public records," however, are defined in Section 1(3) as "any record retained by or of any public governmental body," and "public governmental body" is defined in Section 1(1) as:

". . . Any constitutional or statutory governmental entity, including any state body, agency, board, bureau, commission, committee, department, division, or any political subdivision of the state, of any county or of any municipal government, school district or special purpose district, and any other governmental deliberative body under the direction of three or more elected or appointed members having rulemaking or quasi-judicial power;"

It is our opinion, however, that the legislature intended "official records" in the context of Section 7 to encompass all the same categories of records included in the term "public records" with which the rest of the statute is concerned.

Missouri courts have in the past used the terms "official records" and "public records" interchangeably. See State ex rel. Eggers v. Brown, 134 S.W.2d 28 (Mo. banc 1939). We find no indication in the Act that the General Assembly intended the term "official records" to have any meaning other than "public records," and we believe that in fact the terms mean the same thing.

Initially, we note that Section 7 deals with situations in which a person has already been "charged." In our Opinion No. 299, issued September 28, 1973, to Theodore D. McNeal and Curtis Broston (copy of which is attached hereto), we defined the term "charged with an offense" in the context of Section 6 of the Act to mean that the judicial process has been invoked against an arrested person by either (a) the issuance of a warrant or (b) the returning of an indictment or (c) the filing of a prosecuting attorney's felony complaint or (d) in misdemeanor cases, the filing of an information against the arrested person. We believe the term has the same meaning in Section 7 as in Section 6. Section 7, therefore,

Honorable Ralph L. Martin

refers to situations in which, after the judicial process has been invoked, the matter is resolved favorably to the arrested person, i.e., the case instituted by the charge is ". . . nolle prossed, dismissed or the accused is found not guilty in the court in which the action is prosecuted, . . ." We would point out that all these dispositions must necessarily occur after other matters of record have already occurred in the courts.

We note that, since the legislature intended "official records" in Section 7 to be identical in meaning to "public records" as used elsewhere in the Act, it is required that the records of courts, prosecuting attorneys, and law enforcement agencies be closed upon nolle prosequi, dismissal or a finding of not guilty in the court in which the action is prosecuted, since all these agencies are certainly "constitutional or statutory governmental entities" and therefore "public governmental bodies" whose records are "public records."

We conclude, therefore, that the legislature intended to include court records as "official records" within the scope of Section 7 of the Act. Thus the records of magistrate courts are covered by this section, as are the records of prosecuting attorneys or of other law enforcement agencies. However, the classes of records covered by Section 7 are somewhat more inclusive than those comprehended by Section 6. As we explained in our Opinion No. 299, Section 6 applies to all records of arrests and of any detention or confinement incident thereto, of whatever nature, which are maintained as the records of public governmental bodies, and not merely to the formal arrest records maintained by the arresting agency; but Section 7 appears to apply to all records pertaining to the case, and is not limited to records of arrest, detention, and confinement.

2. In our Opinion No. 299, we stated that the words "closed to all persons" in Section 6 of the Act meant that the records affected by that language remained available to law enforcement agencies only for purposes of litigation, and otherwise must be closed to all persons--that is, that they must not be accessible to the general public. We also noted that closing is a less stringent requirement than expungement. We believe that these principles are equally applicable to the language of Section 7 of the Act. Complete expungement, i.e., destruction of the records closed under Section 7 is not required. However, the records may be used by law enforcement agencies and courts only for purposes of litigation and may not be made accessible to the general public.

CONCLUSION

Therefore, it is the opinion of this office with respect to Act 172, 77th General Assembly, that:

Honorable Ralph L. Martin

1. Section 7 of the Act applies to all records of prosecuting attorneys, law enforcement agencies, and magistrate courts which pertain to the case of a person who has been arrested and charged.

2. Records required to be closed under Section 7 of the Act are not to be expunged, but they are available to courts and law enforcement agencies only for purposes of litigation and otherwise must be inaccessible to the general public.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mark D. Mittleman.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 299
9-28-73, McNeal