

PUBLIC RECORDS: Assessment lists in custody of county court may be  
PROBATE COURT: destroyed when in compliance with provisions of Section  
COUNTY COURT: 109.150, MoRS Cum. Supp. 1955. School enumeration  
lists cannot be destroyed and only the vouchers and  
receipts in any estate filed in probate court may be  
destroyed and then only in compliance with the  
provisions of Section 472.280, Subsection 2, MoRS Cum.  
Supp. 1955.

May 25, 1956



Honorable James L. Paul  
Prosecuting Attorney  
Pineville, Missouri

Dear Mr. Paul:

This will acknowledge receipt of your request for an opinion  
which reads:

"The vault in our court house is becoming  
extremely crowded and there is urgent need  
to destroy any of the old records which we  
are permitted to do in order to make additional  
room space available.

"Kindly advise me how far back the Circuit Clerk  
must keep the assessment list; if the school  
enumeration list must be kept intact; do probate  
files covering administration of estates prior  
to 1940 need to be kept and what other similar  
records may be destroyed."

The law appears to be well established that public records  
required by statute to be made, may only be destroyed when the  
statute clearly provides that such may be done.

In *Molineux vs. Collins*, 177 N.Y. 395, 69 N.E. 727, the court in  
holding certain records could only be destroyed when the Legislature  
so provided by statute said at l.c. 398:

"The measurements and record, therefore, were made  
by authority of law and became the property of the  
state, which paid 'the necessary expenses incurred'  
for the purpose. (L. 1896, ch. 440 §2) They were  
public records and were beyond the control of the

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superintendent of prisons, except for preservation and use. He had no power to destroy them or give them away, or surrender them even to one who, although under judgment of death when they were made, was finally adjudged not guilty. The custodian of a public record cannot deface it or give it up, without authority from the same source which required it to be made. The statute directed the superintendent to make the record, and when he made it the state made it, and it has not authorized him to destroy it under any circumstances, not even to relieve a citizen from an unjust reflection upon his character. \* \* \* \*"

Section 12, Volume 45, Am. Jur. page 425, lays down the general rule as to when public records may be destroyed, and reads, in part:

"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. \* \* \* \*"

You first inquire as to how far back the circuit clerk must keep the assessment lists. We assume you mean tax assessment lists and if we are correct in our assumption then we find no statutory requirement for the circuit clerk even having or keeping such assessment lists. Apparently you had in mind the county clerk keeping such records, at any rate we will, for the sake of this opinion, assume the latter to be the case.

Under Section 137.155, MoRS 1949, it requires the county clerk in such county as yours to preserve and safely keep assessment lists and reads, in part:

"\* \* \* \*"

"3. The list and oath required by this section shall be by the assessor, after he has completed his assessor's books, filed in the office of the

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county clerk, and by him, after entering the filing of the same thereon, be preserved and safely kept."

Under Section 109.150, MoRS Cum. Supp. 1955, the Legislature authorized the county court to direct the sheriff to destroy by burning, during the session of the county court and in the presence of said county court, papers therein designated after said papers have been filed for a period of five years. Said section reads:

"The county courts are hereby authorized to direct the sheriff of their respective counties to destroy, by burning, during the session of and in the presence of the county court, the papers herein designated, after a period of five years after the filing thereof; Assessment lists, merchants' and manufacturers' statements, school estimates, poll books, annual settlements and bonds of road overseers, canceled county warrants, settlements of county treasurer, settlements of superintendent of poor farm, canceled school district warrants, estray papers, appointments of deputies, reports and receipts of the collectors of the revenue, certificates of fines, statements of campaign expenses, quarterly statements of fees received by county officers, settlements of village school district treasurers, road overseers' reports, road commissioners' reports, and bills allowed against the county."

The first item that said statute authorizes destroyed is assessment lists. Therefore, our answer to your first inquiry would be that assessment lists could be destroyed when in compliance with the provisions of Section 109.150, supra, after same had been on file for a period of five years.

Section 164.030 MoRS Cum. Supp. 1955, provides that school enumeration lists shall be turned over to the county clerk after the county superintendent of schools ascertains that said lists are properly made. Said Section reads, in part, as follows:

"\* \* \* \* \*

"2. After ascertaining if said enumeration lists are properly made the county superintendent of schools shall approve same and turn them over to the county clerk. \* \* \* \* \*"

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Therefore, under the foregoing authorities, in the absence of any statutory authority for destroying such records, it is the opinion of this department that enumeration lists may not be destroyed.

You next inquire if probate files covering administration of estates prior to 1940 need be kept?

The only statute we can locate authorizing the destruction of records in the probate court is found under Section 472.280, MoRS Cum. Supp. 1955, Subsection 2, which provides that all vouchers and receipts in any estate filed in the probate court may be destroyed on order of the probate court after same had been on file for a period of five years after final determination of the administration of the estate. Said section reads, in part:

" \* \* \* \* \*

"2. All vouchers and receipts in any estate filed in the court may be destroyed on order of the court after they have been on file for a period of five years after final termination of administration proceedings in the estate."

In the absence of any further statutory authority for destruction of probate court files, it is the opinion of this department that only the vouchers and receipts in such estate may be destroyed as provided in the foregoing statute.

You further inquire what other similar records may be destroyed. This is very general and rather difficult to answer. However, we respectfully suggest that several different kinds of records may be destroyed under and by virtue of Section 109.050, supra.

CONCLUSION

It is the opinion of this department that assessment lists kept by the county clerk may be destroyed when the county court directs the sheriff to destroy same by burning, during a session of the county court and in the presence of said court and after same had been on file for a period of five years as provided under Section 109.050, MoRS Cum. Supp. 1955.

It is the further opinion that the school enumeration lists required to be kept by the county clerk under Section 164.030, MoRS

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Cum. Supp. 1955, may not be destroyed in the absence of any statutory authority for destruction of same.

It is the further opinion of this department that only vouchers and receipts in any estate filed in the probate court may be destroyed and then only on order of the probate court after same had been on file for a period of five years after final determination of the administration of the estate as provided in Section 472.280, Subsection 2, MoRS Cum. Supp. 1955.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton  
Attorney General