

STATE TREASURER

Who may inspect and obtain certified
copies of records in the Office of
State Treasurer.

RECORDS

EVIDENCE

July 1, 1949



Mr. Haskell Holman
Chief Clerk
Office of State Treasurer
Jefferson City, Missouri

Dear Sir:

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

"This is to acknowledge receipt of your
opinion dated May 24, 1949.

"I wish to thank you for the information
contained in such opinion; however, it is
also requested that you furnish this De-
partment with a written opinion covering
all canceled checks at your earliest con-
venience."

The writer in discussing this request with you sub-
sequent to receipt of same concludes that what you are
trying to determine now is what, if any, records or
canceled checks in the Office of the State Treasurer of
the State of Missouri are confidential, and if any and
everyone may examine same or obtain the original for use
as evidence or obtain a certified copy of same for such
purposes.

A careful search of the law in this state relative to
such records reveals only one statute which requires such
records in the office of the State Treasurer to be con-
fidential and that is Section 9414a, Mo. R.S.A. relative
to applications and records concerning an applicant for
old age assistance. While this particular statute is a
part of the Social Security Act, it is specifically directed
to any employee or officer in the State of Missouri and
makes it unlawful for such persons to use for any purpose or
to divulge or make known in any manner to any person, any
information obtained by them in the discharge of their
official duties relative to the identity of an applicant or

recipient or the amount of assistance received by any recipient. There is one exception contained in the above statute and that pertains to proceedings where the right of the applicant to receive assistance or the amount received or to be received by any recipient is called into question. The same statute does authorize persons directly connected with the administration of said act in the performance of their official duties, applicants, recipients or their attorneys, to inspect such records.

Section 9414a reads:

"All applications and records concerning any applicant for, or recipient of old age assistance shall be confidential and shall be open to inspection only to persons directly connected with the administration of this Act in the performance of their official duties, applicants for, or recipients of assistance or their attorneys. It shall be unlawful for any officer or employee of the State of Missouri to use for any purpose or to divulge or make known in any manner whatever to any person any information obtained by them in the discharge of their official duties, relative to the identity of applicants or recipients of old age assistance or the amount of assistance any recipient receives, except in proceedings where the right of applicants to receive assistance or the amount received or to be received by any recipient is called into question.

"Anyone violating any of the provisions of this act shall be guilty of a misdemeanor."

Your request apparently is directed principally at persons desiring original canceled checks filed in your office or certified copies of same, for use as evidence in proceedings instituted and pending in the courts or before some administrative agency of the state.

Our search discloses that all warrants allowed on account against the State of Missouri or grants, salaries paid and expenses, must be certified to by the comptroller and forwarded to the State Auditor for his approval. Upon approval the warrant is then transferred to the State Treasurer for payment. (See Sections 11008.36, 11008.43a

and 11008.44, Mo. R.S.A.) We are assuming for the sake of this opinion that these canceled warrants finally issued by the State Treasurer are the particular records which you now inquire if same may be inspected or placed in the custody of any individual not an employee of the State Treasurer to be used as evidence or may such individuals obtain certified copies of same for such purposes.

Under Sec. 645, Mo. R.S.A., the Legislature has declared that the common law rule in this state is still in full force and effect except where same may be repugnant to the Constitution of the United States, state, or any act of the legislature. Of course, if the State Legislature has made an exception thereto, such is shown by passage of Section 9414a supra, then such an enactment prevails in that particular instance only and the common law rule applies to all not contained in said exception.

A public record has been well defined in *People v. Hartnet*, 226 N.Y.S., l.c. 341, wherein the court said:

"* * * A public record strictly speaking is one made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public or to serve as a memorial of official transactions for public reference. * * *"

In *State v. Henderson*, 169 S.W. (2d) 389, l.c. 392, the respondent therein had been making copies of records found in the Department of Liquor Control of the State of Missouri and she had been selling such information to liquor dealers. The Liquor Control Act nowhere specifically made any records in that department confidential. The Supreme Court in holding that certain records are public records and open for inspection by the public, said:

"In all instances where, by law or regulation, a document is required to be filed in a public office, it is a public record and the public has a right to inspect it. 53 Corpus Juris, Section 1, Pages 604 and 605; *Clement v. Graham*, 78 Vt. 290, 63 A. 146. Ann.Cas. 1913E, 1208; *Robison v. Fishback*, 175 Ind. 132, 93 N.E. 666, L.R.A. 1917B, 1179, Ann.Cas. 1913B, 1271; *State ex rel. Eggers v. Brown*, 345 Mo. 430, 134 S.W. 2d 28.

"Section 4889, supra, also gives authority to the supervisor 'to make such other rules

and regulations as are necessary and feasible for carrying out the provisions of this act, as are not inconsistent with this act.' Under this authority, the appellant's predecessor did promulgate Regulation No. 16, which did require liquor dealers to send the supervisor a copy invoice of liquor sales. As long as that Regulation was in effect, of course, they were public records and respondent was entitled to inspect them. This is not now disputed by the appellant."

In view of the foregoing there can be no question as to what constitutes a public record and in fact nearly all records filed in your office are public records.

The common law rule relative to who may inspect public records has been well stated in Vol. 45, Am. Jur., pp. 427-428, Section 17, which reads in part:

"There is authority to the effect that according to the English common law there is no right in all persons to inspect public documents or records. It is, however, to be noted that the English courts have seldom been called upon to enforce a private individual's right to inspect public documents and records except where the inspection was desired to secure evidence in a pending or prospective suit. Accordingly, there was formulated the following common-law doctrine: Every person is entitled to the inspection, either personally or by his agent, of public records, including legislative, executive, and judicial records, provided he has an interest therein which is such as would enable him to maintain or defend an action for which the document or record sought can furnish evidence or necessary information. This rule, it is said, is not so much a denial of the right of every citizen to inspect the public records and documents as a declaration of the interest which a private individual must have to avail himself of the extraordinary writ of mandamus

to enforce his right. In theory the right is absolute, yet in practice it is so limited by the remedy necessary for its enforcement that it can be denominated only a 'qualified right.' The existence of a suit is not, however, a sine qua non for the exercise of the right."

(Also See Vol. 3, C. J., Sec. 40, page 624).

Therefore we must conclude in view of the foregoing that all public records filed in your office and not made confidential by statute may be inspected at any reasonable time by any person having an interest in same. However, this does not apply to canceled checks issued to recipients of old age assistance, except in such proceedings where the right of the applicant to receive assistance or the amount received by any recipient is called into question. Of course at all times applicants and attorneys and persons connected with the administration of old age assistance may inspect such records.

There are other canceled checks and records that are made confidential under the statutes such as benefit checks issued by the Division of Employment Security under the Department of Labor and Industrial Relations, however, such checks do not clear through the State Treasurer, neither are they in the custody of the State Treasurer and therefore we need not consider them herein. There are some canceled warrants from that department for purchases, salaries and expenses, filed in your department, however, we think the statute hereinabove referred to relative to confidential records of that department does not include such canceled warrants and purchases, salaries and expenses but relates solely to benefits and records pertaining thereto.

Furthermore, we find no authority for the State Treasurer placing any canceled checks or other records of his department in the custody of someone not in any manner associated with his department to be used as evidence in any proceedings before some court, board, commission or referee. We do find statutes providing that certified copies of records in said office are admissible in evidence and should have the same force and effect as if the original record were produced in evidence. (See Sections 1821 and 1824, Mo. R.S.A.) Applying that well established rule of statutory construction that the inclusion of one thing is to exclude all others, we believe it was the legislative intent that original records in the office of the State Treasurer should not be loaned to anyone for use as evidence, but that the Legislature in providing a simple and effective means whereby certified copies of such records may

be introduced in evidence, excluded the possibility of the use of original records. Of course, this does not prevent the issuance by the court of a subpoena duces tecum to the State Treasurer to produce certain records in his office on a date certain, however, in such case those records will be in the custody of the State Treasurer or his agent and not a stranger to the department.

CONCLUSION

Therefore it is the opinion of this department that with the exception of canceled checks of recipients of old age assistance and other records pertaining to identity and amount of grants to such recipients, all records in the Office of the State Treasurer may be inspected at reasonable times by any person interested as provided under the common law rule hereinabove enumerated by text writers and the courts. Furthermore, that recipients of old age assistance, their attorneys and employees of the state in the administration of old age assistance may inspect canceled checks of recipients and records pertaining to the administration of old age assistance on file in your office; that at no time are you authorized in placing original records on file in your department, in custody of persons not employed therein, for use as evidence in courts or before administrative agencies of this state. However, this does not mean that you shall not comply with a subpoena duces tecum issued by the court or authorized agency to produce certain records in your custody. Furthermore, that persons interested or desiring such records on file in your office for use as evidence may obtain certified copies of same, except those pertaining to old age assistance as provided in Sections 1821 and 1824, Mo. R.S.A. which certified copies shall have the same force and effect as original records.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL

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