

RECORDERS: Instruments retained on file in county recorder's
COUNTIES: office for one year as required by Section 59.360
RSMo 1949, to be disposed of in manner set forth
in Section 59.430 if possible, and if not so dis-
posed of the same may be removed to any convenient
and safe storage space.

November 12, 1952



11/13/52

Honorable J. W. Thurman
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri

Dear Sir:

The following opinion is rendered in reply to your
recent request reading as follows:

"Section 59.360 of the Revised Statutes, 1949, requires that certain instruments be retained in the Recorder's Office for one year after the instruments are recorded. At the present time, the Recording Office in this County is very cramped for space and in looking over their files they discovered that there was a very large number of the deeds that had been held pursuant to the above Section that had never been reclaimed. There are instruments in this group that go back as far as 1874. The County Recorder desires to remove a large portion of these old instruments and place them on file in the attic of the Jefferson County Court House. I might add that some such move is necessary if the Recorder is to continue to have room to carry on his business.

"Please advise whether it is permissible for the Recorder to remove the above described documents up to the last ten years."

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In your letter quoted above specific reference is made to Section 59.360 RSMo 1949, which contains the following language:

"Whenever the recorder of deeds, or any other person acting as recorder of deeds, in any county in this state, shall record any instrument of writing affecting real estate, which purports to have been signed and acknowledged more than twelve months prior to the time the same is presented for record, he shall retain such instrument of writing in his office, subject to the inspection of all parties interested, for one year next succeeding the time such instrument shall be recorded; provided, that if any such instrument of writing shall affect real estate in more than one county, then as soon as it shall be recorded in the first county in which it may be filed, it shall be sent from county to county in the order named in the instrument of writing, by the respective recorders thereof, until it shall have been filed and recorded in each county in which any such real estate may be situated, and retained in the office of the recorder of the county in which it shall be last recorded until the expiration of one year after the last filing thereof; provided, that the recorders shall not be required to transmit such deed from county to county unless the party desiring the same recorded in such other county or counties shall first pay the recorder's fee, to be transmitted with the deed."

Section 59.360, RSMo 1949, quoted above, is so worded as to have specific application to "any instrument of writing affecting real estate, which purports to have been signed and acknowledged more than twelve months prior to the time the same is presented for record." Such statute does not disclose what disposition is to be made of such instruments after they have been retained in the recorder's office for one full year. The general statute touching disposition of recorded instruments in counties other than class one, and in cities containing six hundred thousand inhabitants, is Section 59.430 RSMo 1949, which provides:

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"The recorder shall certify, on or under such deed, mortgage, conveyance, deed of trust, bond, commission or other instrument, so recorded, the day and time of the day, month and year, when he received it, and the book and page or pages of the book in which it is recorded, and, when recorded, deliver it to the party or his order."

In the absence of any directive appearing in Section 59.360, RSMo 1949, relative to disposition of instruments retained for one year as required by such statute, it seems clear that such instruments, after having been retained for the required period of one year are to be disposed of as provided in Section 59.430, cited above, and insofar as such a disposition can be accomplished at this date, the recorder should so dispose of such records. No statute has been discovered which will serve to prohibit the recorder from removing from his office files those instruments which have been retained for the period of one year as required by Section 59.360, RSMo 1949, and which cannot be delivered to the parties entitled thereto under Section 59.430, RSMo 1949, and the same may be stored in any convenient and safe storage space.

CONCLUSION

It is the opinion of this department that instruments required, under Section 59.360, RSMo 1949, to be kept on file in the county recorder's office for one year after recording, should then be disposed of as provided in Section 59.430, RSMo, 1949, and any such instruments not so disposed of may be removed from the recorder's office to any convenient and safe storage space.

Respectfully submitted,

APPROVED:



J. E. TAYLOR
Attorney General

JULIAN L. O'MALLEY
Assistant Attorney General

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