

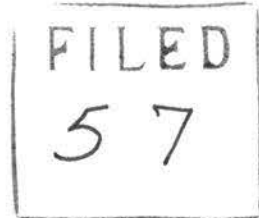
GREAT SEAL OF THE STATE
OF MISSOURI:

PROCUREMENT: DEVICE:

Secretary of State authorized to procure a new great seal; but no choice of device to be engraved on same, as device is not subject to change, but must comply strictly with Section 15437, R. S. Mo. 1939.

May 20, 1949

Mr. J. Paul Markway
Chief Clerk
Office of Secretary of State
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your letter in which you request an opinion of this department based on the following facts:

"This office is contemplating having a new 'Great Seal of the State of Missouri' made. In this connection we have checked the seals now in use.

"Section 15437, R.S. Mo; 1939 describes the 'Great Seal of the State of Missouri'. We quote from this section, ' For the crest, over a helmet full-faced, grated with six bars; or, a cloud proper, from which ascends a star argent, and above it a constellation of twenty-three smaller stars.'

"Attached hereto, marked 'exhibit 1' is an imprint made from the seal now in use in our Commission department. This is the one used on all the official documents signed by the Governor. As you will notice, the twenty-three small stars above the helmet are very plain. The large star is either not there, or it has been worn so it no longer is discernible on the imprint.

"'Exhibit 2', also attached, shows the 23 small stars but no large star. This is the seal which has been used in our Corporation department.

"It appears obvious to us, therefore, that a new seal is needed.

"The photograph which we are sending you with this letter is an enlarged reproduction of what we consider to be the original 'Great Seal'. This original seal is in our keeping. Letters of transmittal in our files indicate that this is the one taken from this State during the Civil War and returned to Governor McClurg in 1869. It seems to us that this is the most authentic.

"As you will notice, there are some differences in the design of the original and the one now in use. For instance, the bears are facing somewhat differently, and the decorations extending to the right and left of the helmet are of different designs. The design of the original, however, seems to come closer to the design shown on page 3906 of Volume II of the Revised Statutes of Missouri, 1939.

"We respectfully request your opinion as to whether or not we have the authority to have a new seal made. If so, we would also like your opinion as to whether or not we have any choice between the various designs formerly used."

The origin of the great seal is so very closely connected with the early history of Missouri and the pioneers who first inhabited the state that it is difficult to write an opinion of this nature without also writing something of the early citizens of Missouri. However, we shall confine our remarks as closely as possible to a discussion of the answers to the questions referred to in the request for an opinion and shall not refer to Missouri's first citizens except as necessity may require.

It appears that the most important and long-standing use of a seal by a government is as a symbol of sovereignty and that as such seals are generally in use among all civilized countries or states. The framers of our first constitution in 1820, found it necessary to make provision for a great seal of Missouri to symbolize the supreme authority of the new state. Article IV, Section 22, Constitution of 1820, provides for the great seal and designates the secretary of state custodian of said seal, and reads as follows:

"The secretary of state shall, as soon as may be, procure a seal of state, with such emblems and devices as shall be directed by law, which shall not be subject to change. It shall be called the 'Great seal of the state of Missouri;' shall be kept by the secretary of state, and all official acts of the governor, his approbation of the laws excepted, shall be thereby authenticated."

By an act of the legislature which became effective January 22, 1822, the device of the great seal was set out in detail. Section 2, of the act made it the duty of the secretary of state to procure a great seal at public expense. Said section reads as follows:

"Be it enacted by the General Assembly of the state of Missouri, That the device for an armorial achievement for the state of Missouri, shall be as follows, to wit:
Arms, parted per pale, on the dexter side gules, the white or grisly bear of Missouri, passant guardant, proper: on a chief engrailed azure, a crescent argent; on the sinister side argent, the arms of the United States; the whole within a band inscribed with the words 'UNITED WE STAND, DIVIDED WE FALL.' For the crest, over a helmet full faced, grated with six bars, or, a cloud proper, from which ascends a star argent, and above it a constellation of twenty-three smaller stars argent on an azure field, surrounded by a cloud proper.
Supporters on each side, a white or grisly bear of Missouri, rampant, guardant proper.
standing on a scroll, inscribed with the motto, 'Salus populi Suprema lex esto,' and under the scroll the numerical letters MDCCCXX. And the great seal of this state shall be so engraved as to present by its impression, the device of the armorial achievement aforesaid, surrounded by a scroll inscribed with the words 'THE GREAT SEAL OF THE STATE OF MISSOURI' in Roman capitals, which seal shall be in a circular form and not more than two and a half inches in diameter.

"Sec. 2. Be it further enacted, That the secretary of state shall procure the said seal, engraved as prescribed by this act, and he is hereby authorized to draw on the auditor of public accounts for all expenses accruing in procuring such seal, to be paid by the treasurer of this state out of any moneys in the treasury. This act shall be in force from and after the passage thereof."

Complying with the act as passed by the first general assembly, William G. Pettis, then Secretary of State, carried into effect the statute describing the coat of arms by having engraved, "The Great Seal of the State of Missouri." Since it was optional with him under the act, he selected the grizzly bear as in his opinion such bear most positively represented the rugged character of the inhabitants of the new State of Missouri.

While it is not known for certain who may have suggested the arms of Missouri, it is generally believed that Circuit Judge Nathaniel Beverly Tucker is the person responsible for the design as he was one of the most accomplished and public spirited leaders of his day.

He was a very ardent supporter of states rights and it appears that this idea seems to pervade the design of the great seal.

The meaning of the arms of the state is not now generally understood, and since it has a very profound significance, expressing the situation of the new state in very appropriate and heraldic language, we feel that a brief explanation of same is proper in this opinion.

We therefore quote from Houck's History of Missouri, page 270, as follows:

"The arms of the state of Missouri and of the United States empaled together, yet separated by a pale, denote the connection existing between the two governments, and show that, although connected by a compact, yet we are independent as to internal concerns; the words surrounding the shield denote the necessity of the Union. Quadrupeds are the most honorable bearing. The great grizzly bear being almost peculiar to the Missouri river and its tributaries, and remarkable for his prodigious size, strength, and courage, is borne as the principal charge of our shield. The color of the shield is red and denotes hardiness and valor. The chief is most honorable of all ordinaries. The color blue signifies vigilance, perseverance, and justice. The crescent, in heraldry is borne on the shield by the second son, and on our shield denotes that we are the second state (Louisiana being the first) formed out of territory not within the original territorial limits of the United States and admitted into the Union. The crescent also denotes the growing situation of this state as to its inhabitants, wealth, power, etc. The color white signifies purity and innocence. The hemlet indicates enterprise and hardihood.

The one blazoned on this coat of arms is that assigned to sovereigns only. The star ascending from a cloud to join the constellation shows Missouri surmounting her difficulties and taking her rank among the other states of the Union. The supporters, the same powerful animals, borne on the shield, which support the shield, on which are emblazoned the arms of the state and of the United States, denote, that while we support ourselves by our own internal strength we are also in support of the general government. The motto shows that the good of the people is the supreme law of this state. The numerals under the scroll show the date of the constitution."

From the enlarged photograph of the great seal enclosed in your letter, it appears that the subject is the seal taken from the capitol on June 12, 1861, by Governor C. F. Jackson, and later returned by Thomas C. Reynolds to Governor McClurg on May 12, 1869. (Annotation (a) Section 8144, R.S. Mo. 1889).

It appears that the laws relating to the great seal and to the duties of the secretary of state as custodian of same have not undergone any change from the beginning, with one notable exception.

Section 2, Laws of Mo. 1822, supra, provided that the secretary of state should procure a great seal engraved as provided by the act, the expense of which was to be borne by the state. This section is found in the revised statutes of Missouri continuously until May 14, 1909. On that date, Section 10017, R.S. Mo. 1899, relating to the authority of the secretary of state to procure a seal was repealed by the legislature. From the date the repeal became effective the secretary of state has not had the specific statutory authority to procure a great seal. However, for reasons hereinafter given, we are of the opinion that this important duty enjoined on the secretary of state was not lost by the repeal of the section mentioned.

As already noted in the constitutional and statutory provisions, particularly Section 12995, Laws of Mo. 1945, the secretary of state is still the custodian of the great seal, and among other duties he is still required to affix the seal to certain documents, as set out in Section 12996, Laws of Mo. 1945, which sections read as follows:

"Section 12995. Safe-keeping of state seal and all public records--register of all commissions and official acts of the governor.-- He shall keep his office at the seat of the government; have the safe-keeping of the seal of state, and of all public records, including surety bonds except of secretary of state, rolls, documents, acts, resolutions and orders of the general assembly; keep a register of all commissions issued, the official acts of the governor, and, when necessary, attest the same."

"Section 12996. Affix seal to all commissions and official acts of the governor--exception.-- He shall affix the seal of the state to and countersign all commissions and other official acts required by law to be issued or done by the governor, his approbation or disapprobation of the acts of the general assembly excepted, and all other instruments, when required or authorized by the governor, or by law."

It is obvious that under certain circumstances it would be impossible for him to perform the duties mentioned in the preceding sections if it is assumed that he no longer has any authority to procure a great seal.

For example if the great seal should become damaged, worn-out, destroyed by fire, or for other causes could no longer be used as a great seal, the secretary of state would have no authority to procure another one, and of course he could not affix the seal to certain documents as required by law, such a contingency would finally result in depriving Missouri of its great seal.

It is not known what idea the legislature may have had in mind when it repealed that part of the statute back in 1909, authorizing the secretary of state to procure a seal, since there is no record of any discussion on the subject in the journals of either house of the legislature, but we believe it was not the intention of the legislature to repeal any sections of the statute defining the duties of the secretary of state regarding the great seal, as no further action in this respect was over taken.

It appears that if the legislature had meant for the secretary of state never again under any circumstances to procure a new seal it would have so stated in very clear and unmistakable language.

To assume that the Secretary of State no longer has any authority to procure another seal would be to place him in the ridiculous position of being required to perform a duty (in this instance to affix the great seal to certain documents) and at the same time to

forbid him to procure the necessary equipment with which to perform that duty. We are of the opinion that the legislature had no intention of placing the secretary of state in any such embarrassing position.

Section 13006, Laws of 1945, regarding the expenses incidental to the performance of duties of the secretary of state, provides as follows:

"All expenses connected with the performance of duties assigned to the secretary of state shall be governed by the general laws with respect to contracting obligations, certifying of accounts and other matters pertaining thereto."

Since this section of the statute begins with these words, "All expenses connected with the performance of duties assigned to the secretary of state * * *," we are of the opinion that the word "all" would include every expense of any nature that was connected with the performance of any duty that had been assigned to the secretary of state.

We are of the further opinion that the expense of procuring a new seal would come within this provision of the statute, and that such statute would be sufficient authority for the secretary of state to procure a new seal as circumstances might require.

The act of the legislature of 1822, supra, clearly described the device of the great seal in detail, and it is further noted in this connection that the device was not subject to change. The above mentioned legislative act has been a part of our statutes since its passage and is now designated as Section 15437, R. S. Mo. 1939.

In procuring a new great seal of Missouri in view of the foregoing constitutional and statutory provisions we are of the opinion that the secretary of state has no choice as to the various devices formerly in use. From the various samples of such devices submitted to us it appears that the enclosed enlarged photograph of the great seal most nearly meets the description set out in Section 15437, R.S. Mo. 1939, although the name of the engraver appearing near the lower part of the seal is not authorized by the constitution or any statutory provisions. In the procurement of a new seal the secretary of state should ascertain that such seal exactly meets the description of the device set out in Section 15437, supra, and that no words, figures, signs or symbols or characters of any nature whatsoever should appear thereon unless authorized by said section.

CONCLUSION

It is therefore the opinion of this department that the secretary of state by virtue of above quoted constitutional and statutory provisions has authority to procure a new great seal of Missouri, at public expense, as necessity for same may require, and in order that such officer may be enabled to fully perform the duties enjoined on him by law as to the affixing of said great seal to certain documents.

It is the further opinion of this department that in procuring a new great seal of Missouri, the secretary of state has no choice as to the various designs formerly used to be engraved on said seal. Section 15437, R.S. Mo. 1939, clearly describes the device of said seal, which device is not subject to change. We are of the opinion that any deviations therefrom is without authority of law and that the engraver should follow the description of the device of the great seal in said section as closely in every detail as it is possible for him to do.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General