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MICROFILMING OR OTHER DUPLICATION PROCESS—PROBATE COURT MAY MAKE UP RECORD BY SUCH USE—ORIGINAL DOCUMENTS MUST BE MAINTAINED ON FILE—EVENTUAL DESTRUCTION—OAG 1389, PAGE 39, 1950, OVERRULED—SECTIONS 9.01, 149.38, 2101.12, 3107.14, 5123.37, 5123.38, 5731.48 RC.

SYLLABUS:

A Probate Court may make up a record in so far as same is required by Sections 2101.12, 3107.14, 5123.37, 5123.38 and 5731.48, Revised Code, by microfilming or other duplication process as authorized by Section 9.01, Revised Code, provided the original documents are maintained on file and until their eventual destruction is accomplished only in accordance with the provisions of Section 149.38, Revised Code. Opinion No. 1389, Opinions of the Attorney General for 1950, page 39, overruled.

Columbus, Ohio, August 25, 1955

Hon. James W. Dinsmore, Prosecuting Attorney
Geauga County, Chardon, Ohio

Dear Sir:

I have before me your request for my opinion wherein you ask whether or not a Probate Court may microfilm papers or documents relative

to proceedings before it, said microfilm to constitute the record as required by Sections 2101.12, 3107.14, 5123.37, 5123.38, and 5731.48, Revised Code.

You have advised me that from the microfilm a microstrip or positive print would be made, which print would then be affixed by a permanent mastic to a 5" x 8" card. This card would then be filed and maintained as the record, and in the manner required by the statutes enumerated above. The finished microstrip as affixed to the card would then be legible to any person examining the record with the aid of an enlarging reading device. From an examination of the samples which you furnished me with your opinion request, it would appear that approximately 75 or more microphotographs, each representing one full page of legal document, can be accommodated on one card.

It is also my understanding that in all cases the original papers constituting the jacket file in the probate matter will be appropriately maintained on file.

Section 9.01, Revised Code, provides as follows:

"When any officer, office, court, commission, board, institution, department, agent, or employee of the state, or of a county, or any political subdivision, who is charged with the duty or authorized or required by law to record, preserve, keep, maintain, or file any record, document, plat, court file, paper, or instrument in writing, or to make or furnish copies of any thereof, deems it necessary or advisable, when recording any such document, plat, court file, paper, or instrument in writing, or when making a copy or reproduction of any thereof or of any such record, for the purpose of recording or copying, preserving, and protecting the same, reducing space required for storage, or any similar purpose, to do so by means of any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process, which correctly and accurately copies or reproduces, or provides a medium of copying or reproducing, the original record, document, plat, court file, paper, or instrument in writing, such use of any such photographic processes, for any such purpose, is hereby authorized. Any such records, copies, or reproductions may be made in duplicate, and such duplicates shall be stored in different buildings. The film or paper used for this process shall be of acetate base and shall comply with the minimum standards of quality approved for permanent photographic records by the national bureau of standards.

"Any such officer, office, court, commission, board, institution, department, agent, or employee of the state, a county, or any political subdivision may purchase or rent required equipment

for any such photographic process. When so recorded, or copied or reproduced to reduce space required for storage or filing of such records, said photographs, microphotographs, microfilms, or films, or prints made therefrom, when properly identified by the officer by whom or under whose supervision the same were made, or who has the custody thereof, have the same effect at law as the original record or of a record made by any other legally authorized means, and may be offered in like manner and shall be received in evidence in any court where such original record, or record made by other legally authorized means, could have been so introduced and received. Certified or authenticated copies or prints of such photographs, microphotographs, films, or microfilms shall be admitted in evidence equally with the original photographs, microphotographs, films, or microfilms.

“Such photographs, microphotographs, microfilms, or films shall be placed and kept in conveniently accessible, fireproof, and insulated files, cabinets, or containers, and provisions shall be made for preserving, safekeeping, using, examining, exhibiting, projecting, and enlarging the same whenever requested, during office hours.”

It would appear that the foregoing section in unmistakable terms authorizes the procedure which you have suggested.

While undoubtedly the statutes to which you have referred and which require the preparation and maintenance of a record contemplate the use of traditional methods of duplication whereby such record is preserved in bound volumes, it is equally apparent that the Legislature, in enacting Section 9.01, supra, intended to permit the use of space or labor saving methods when and where determined to be practicable by appropriate authority. The statute, in explicit terms, applies to “* * * and * * * court * * * required by law to * * * maintain * * * any record * * *.” It expressly authorizes the use of microphotographic processes “* * * for the purpose of recording * * *.” Accordingly, Section 9.01, supra, must be considered as a necessary supplement to those statutes heretofore enumerated, which require the preparation and maintenance of such a record.

You have, however, called my attention to an opinion of my predecessor, the same being Opinion No. 1389, Opinions of the Attorney General for 1950, page 40, which considered an analogous situation in the Common Pleas Court and reached the following conclusions as expressed by the syllabus:

“1. A clerk of courts may not under Section 32-1, General Code, as amended by Amended Senate Bill No. 14, 98th General

Assembly, abandon the present method of making up records he is required to make under Section 2883, General Code, and substitute in lieu thereof, micro-film or micro-photographic process, which reproduces the original court records on miniature films, for the purpose of preserving these films as records in the case.

“2. Section 32-1, General Code, as amended by Senate Bill No. 14, 98th General Assembly, was not intended by the legislature to act as a substitute for an original record, document, plat, court file, paper or instrument in writing, but was intended to operate as a means of preserving old records, documents, plats, court files, papers or instruments in writing for safekeeping and of reducing the space required for their storage.”

Analysis of Opinion No. 1389, *supra*, discloses that the author based his conclusions on two assumptions, (1) that the record as microfilmed was a substitute for the original documents as filed, and (2) that the legibility of the finished microphoto was questionable inasmuch as an examination thereof involved a “tedious and cumbersome operation” with an enlarging device.

With respect to the author’s first assumption, it is noted that he relied on a provision of Section 32-1, General Code, the predecessor of Section 9.01, *supra*, which provided that the original paper once microfilmed could not be destroyed until the time for the commencement and prosecution of legal proceedings based thereon had elapsed and in no event until the expiration of 21 years from the date of its filing. In this connection it may be noted that this provision relative to the destruction of the original document was eliminated by the 99th General Assembly in 124 Ohio Laws, 485, and the destruction of such original documents was made a matter for the determination of the County Records Commission in the case of county documents, Section 149.38, Revised Code, the State Records Commission, with respect to state documents, Section 149.37, Revised Code, and the City Records Commission, as regards municipal documents, Section 149.39, Revised Code. In each such case the request for destruction must be initiated by the officer or agency concerned.

In any event, however, I do not consider that the legal restrictions upon the destruction of an original document, once duplicated by microfilm or other processes, is in any way germane to the question of whether or not such document may be microfilmed or otherwise duplicated in the first instance. I am, therefore, of the opinion that Opinion No. 1389, *supra*, should be overruled in this connection.

With regard to the second assumption of Opinion No. 1389, supra, I do not conceive it to be the function of this office to pass upon the relative efficiency of any of the processes for the duplication of documents, which an office or officer may adopt within the frame-work of the authorization embodied in Section 9.01, supra. This I consider to be the sole function and responsibility of the “* * * officer, office, court, commission, board, institution, department, agent, or employee * * *” of the state, county or political subdivision concerned.

Accordingly, and in specific answer to your inquiry, it is my opinion that :

A Probate Court may make up a record in so far as same is required by Sections 2101.12, 3107.14, 5123.37, 5123.38 and 5731.48, Revised Code, by microfilming or other duplication process as authorized by Section 9.01, Revised Code, provided the original documents are maintained on file and until their eventual destruction is accomplished only in accordance with the provisions of Section 149.38, Revised Code. Opinion No. 1389, Opinions of the Attorney General for 1950, page 39, overruled.

Respectfully,

C. WILLIAM O'NEILL

Attorney General