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DESTRUCTION—COUNTY RECORDS—SECTION 149.381 RC SUPPLEMENTAL TO SECTION 149.38 RC—ALLOWS DESTRUCTION OF RECORDS WHICH HAVE NOT BEEN COPIED OR REPRODUCED IN MANNER AUTHORIZED BY SECTION 9.01 RC, PROVIDED RECORDS CONFORM TO REQUIREMENTS OF SECTION 149.381 RC AND THERE IS COMPLIANCE WITH PROCEDURE OUTLINED IN SECTION 149.381 RC.

SYLLABUS:

Section 149.381, Revised Code, is supplemental to Section 149.38 and allows the destruction of county records which have not been copied or reproduced in the manner authorized by Section 9.01, provided such records conform to the requirements of Section 149.381 and, provided further, that the procedure described in Section 149.381 is complied with.

Columbus, Ohio, August 12, 1954

Hon. C. Watson Hover, Prosecuting Attorney  
Hamilton County, Cincinnati, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“We have recently begun actual operation of a County Records Commission as provided in R. C. 149.381 and have on hand a number of requests to process leading to the ultimate destruction of certain records.

“We have been unable to arrive at a statutory interpretation of paragraph 1 of the aforesaid statute, particularly in that portion which reads:

“\* \* \* records \* \* \* that are not specifically required by law to be kept without being copied or reproduced as prescribed in Section 9.01 of the Revised Code \* \* \*.”

“The above phraseology seems to be somewhat ambiguous because if the phrase ‘not required by law to be kept’ be deemed to modify the word ‘records’ then the statute seems to be wholly unnecessary, while the phraseology ‘without being copied, etc.’ and referring to R. C. 9.01 fails to indicate any requirement that any record shall be copied and refers only to records which are required to be kept. The applications pending before our commis-

sion seek the actual destruction of records without copying. The question, accordingly, presents itself as to whether the statute, in spite of its apparent intent as to the destruction of records, actually carries any such authority.

"Since this question would be a matter of state-wide concern and of equal interest to all counties, your interpretation of the actual process leading to the destruction of records and of what kind of records may be considered for destruction would be appreciated."

Section 149.381, to which you refer, reads in part as follows:

"A county records commission shall have the power to consider the destruction or other disposition of records, papers, or instruments *that are not specifically required by law to be kept without being copied or reproduced as prescribed in section 9.01 of the Revised Code*, and do not involve any title to or right in property or constitute a regular record of any court, if such records, papers or instruments are more than fifteen years old and do not pertain to any pending case, claim, or action and no longer have any value historical or otherwise.

"A commission may decide that, in lieu of their destruction, records shall be transferred to an educational institution, library, museum, historical, research or patriotic organization in this state, if such transfer is requested by the receiving institution or organization.

"Any county officer or official who requests the destruction or other disposition of records in his office, department, agency, board, bureau or commission shall submit a written application to the commission for that purpose. The application shall contain a detailed description of the records which the applicant requests to have destroyed or otherwise disposed of. This application shall be approved by the bureau of inspection and supervision of public offices of the state of Ohio. A copy of any such application shall be furnished by the commission to the curator of history and archivist of the division of museum and library of the Ohio state archaeological and historical society. \* \* \*

"\* \* \* If the county records commission deems it advisable to dispose of such records, it shall adopt a resolution setting forth what records are to be destroyed or disposed of and the necessity of such disposition and make application to a judge of the court of common pleas of such county for permission to destroy or dispose of such records.

"No resolution of the commission to destroy or otherwise dispose of any records shall be valid unless it is agreed to by all members of the commission and reduced to written form and

signed by each member. Upon hearing the application if such judge finds it proper and not detrimental to the public interest to destroy or to dispose of such records he shall grant such application. No records shall be destroyed until the expiration of sixty days from the authorization by the court. \* \* \*

(Emphasis mine.)

Your letter indicates that the confusion arises in the interpretation of the emphasized clause in the above-quoted section. In attempting to explain the meaning of Section 149.381, I feel that it is vital to recognize the conditions under which it was enacted. That is to say, Section 149.381 is supplemental legislation; it was enacted and took effect *after* Section 149.38. Therefore, it would seem to follow that Section 149.381 was enacted to provide for certain contingencies which were not covered by Section 149.38. Section 149.38 states:

“There is hereby created, in each county, a county records commission \* \* \*

“Notwithstanding section 9.01 or any other section of the Revised Code, the commission may order the destruction or other disposition, at any time, of any county record, document, plat, court file, paper, or instrument in writing that has been copied or reproduced in the manner and according to the procedure prescribed in section 9.01 of the Revised Code. Before such order may be given by the commission, the officer or person in charge, or the majority where there are more than one, of any office, court, commission, board, institution, department, or agency of the county shall request, in writing, that such permission be granted. When any such written application is made by a member of the commission, that member shall not serve in the consideration of that application. \* \* \*

This statute permits the destruction of *any* record, document, plat, court file, paper, or instrument in writing, but *only* if a copy of such instrument has been made in the manner permitted by Section 9.01. Obviously, Section 149.38 is somewhat restrictive in its application. Thus, it seems to me that the legislature, recognizing the limited applicability of Section 149.38, sought to remedy the situation by enacting Section 149.381. In other words, Section 149.381 was designed to permit the destruction of certain records whose destruction was not authorized under Section 149.38. The only type of records which could *not* be destroyed under Section 149.38 were those which had *not* been copied. The legislature apparently felt that there were many records which might properly be

destroyed even though no copy of them had been made under the process described in Section 9.01. Thus, Section 149.381 was enacted to authorize the destruction of such records. However, the legislature was mindful of the fact that to allow such a wholesale destruction of uncopied records might conflict with particular sections of the code specifically requiring the permanent preservation of certain original records. With this in mind, the legislature enacted, as part of Section 149.381, the clause which provides that only uncopied records which are not "specifically required by law to be kept" may be destroyed. Though I am unaware of any code provisions which specifically require the permanent preservation of certain records, I feel that the legislature was acting with justifiable caution in so prescribing the destruction process. The legislature's caution did not, however, stop here. It apparently was felt that there were some records which, although not specifically required by law to be kept, nevertheless were of sufficient importance to justify not destroying them unless they were copied, that is, unless Section 149.38 was complied with. Hence the statute provides that certain other records may not be destroyed without being copied. These records are :

"[those which] involve any title to or right in property or constitute a regular record of any court \* \* \*"

The legislature provided one more limitation by stating that the entire section was subject to the qualification that no uncopied records could be destroyed unless :

"\* \* \* such records, papers, or instruments are more than fifteen years old and do not pertain to any pending case, claim, or action and no longer have any value, historical or otherwise."

These limitations, when added to the numerous other safeguards provided in subsequent paragraphs of Section 149.381, indicates that the legislature was aware of the fact that records that have not been copied should be destroyed only in specific cases and even then only under a procedure designed to prevent the destruction of any valuable documents.

There in my opinion, the first paragraph of Section 149.381 may be paraphrased as follows :

"A county records commission shall have the power to consider the destruction or other disposition of records, papers, or instruments which have not been copied or reproduced in the manner authorized by Section 9.01, unless such records are *specifically*

required by law to be permanently preserved. No records may be destroyed under this section which involve any title to or right in property, or constitute a regular record of any court. Provided, however, that this section shall apply only to records which are more than fifteen years old and do not pertain to any pending case, claim, or action and no longer have any value, historical or otherwise.” (Emphasis mine.)

What was being done in Section 149.381 was to authorize the destruction of numerous old records of no value whatever to anyone which would never be copied as permitted by Section 9.01 for the very reason that they *were* valueless.

In further support of my conclusion, I should like to call your attention to certain other sections in Chapter 149 which pertain to the *State Records Commission*, and to compare these sections with Sections 149.38 and 149.381. Section 149.32 authorizes the creation of the *State Records Commission* and Section 149.37 permits the *State Records Commission* to destroy any records which have been copied as authorized by Section 9.01. Thus, it will be seen that these two sections perform the same function with regard to the *State Records Commission* as Section 149.38 does with respect to the *County Records Commission*. Furthermore, the *State Records Commission* is given additional power by Section 149.33 to destroy *uncopied* records if they are more than six years old. Before Section 149.381 was enacted, however, a *County Records Commission* had no such power since, as I have previously pointed out, only *copied* records could be destroyed under Section 149.38. In short, there was no counterpart, on the county level, to Section 149.33. That Section 149.381 was designed to perform the same function on a county level as Section 149.33 does on the state level appears to me indisputable since Section 149.381 uses virtually the same language as does Section 149.33. While it is true that Section 149.33 does not contain the precise phrase which is in question in this opinion, I do not feel that this alters the fact that Section 149.33 and Section 149.381 are of identical import. The circumstances under which Section 149.381 was enacted and the close similarity of the language of the two sections seem to me to create a reasonable presumption that Section 149.381 was intended to fulfill the same function as that performed by Section 149.33.

If it be conceded that Section 149.381 is of the same application as Section 149.33, it is in order to consider the construction which was given

Section 149.33 in Opinion Number 679, Opinions of the Attorney General for 1951, page 398. The question there raised was:

“Does the State Records Commission have authority to order the destruction of original state records which have been micro-filmed but are less than six years old?”

I there concluded that the Commission did have such power by virtue of Section 1465-119, General Code, Section 149.37, Revised Code. In the course of that opinion, it is said, at page 399:

“It is apparent, upon examination of the legislation creating the State Records Commission \* \* \* that the six-year destruction rule provided for by Section 1465-116, General Code [Section 149.33, Revised Code], \* \* \* *was intended to operate in cases where no reproduction of the original record was to be preserved.* \* \* \*”  
(Emphasis mine.)

The opinion observed that Sections 1465-116, General Code (Section 149.33, Revised Code) and Section 1465-119, General Code (Section 149.37, Revised Code) operated together. That is, Section 1465-119 allowed the destruction of *copied* records and 1465-116 authorized the destruction of *uncopied* records.

It is my opinion that the legislature enacted Section 149.381, Revised Code, to give the County Records Commission the same two-fold power which the State Records Commission had, namely, to authorize the destruction of copied *or* uncopied records under certain prescribed conditions.

Therefore, in specific answer to your inquiry, it is my opinion that Section 149.381, Revised Code, is supplemental to Section 149.38 and allows the destruction of county records which have not been copied or reproduced in the manner authorized by Section 9.01, provided such records conform to the requirements of Section 149.381 and, provided further, that the procedure described in Section 149.381 is complied with.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General