

**OPINION NO. 90-057****Syllabus:**

1. Pursuant to R.C. 9.01 and R.C. 317.13, a county recorder may utilize microfilming to fulfill his statutory duties to record instruments under R.C. Chapter 317.
2. Subject to the provisions of R.C. 149.351(A), a county official may, pursuant to a valid contract, temporarily transfer physical custody of the records of his office to a private contractor to microfilm such records at the facilities of the contractor. The contract must incorporate sufficient safeguards to prevent loss, damage, mutilation or destruction of the records.

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**To: Paul F. Kutscher, Jr., Seneca County Prosecuting Attorney, Tiffin, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, September 7, 1990**

I have before me your request for my opinion concerning microfilming of the records of the county recorder. Specifically, you wish to know whether a county recorder may allow original documents presented to him for recording, to leave the

physical custody of his office while being microfilmed, pursuant to a contract with a private business.<sup>1</sup>

The county recorder has the duty to:

record<sup>2</sup> in the proper record, in legible handwriting, typewriting, or printing, or by any authorized photographic process, all deeds, mortgages, plats, or other instruments of writing required or authorized to be recorded, presented to him for that purpose. Such instruments shall be recorded in regular succession, according to the priority of presentation, entering the file number at the beginning of such record. On the record of each instrument he shall record the date and precise time such instrument was presented for record. All records made, prior to July 28, 1949, by means authorized by this section or by section 9.01 of the Revised Code shall be deemed properly made. (Footnote added).

R.C. 317.13. Thus, the county recorder may record documents in the manner prescribed in R.C. 317.13 and R.C. 9.01.

The authority to microfilm documents is expressly granted in R.C. 9.01, which states in relevant part:

When any officer, office,...department, agent, or employee...of a county,...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, or perforated tape, magnetic tape, or other magnetic means, electronic data processing, machine readable means, graphic or video display, or any combination thereof, which correctly and accurately copies, records, or reproduces, or provides a medium of copying, recording, or reproducing, the original record, document, plat, court file, paper, or instrument in writing, such use of any such photographic or electromagnetic processes, for any such purpose is hereby authorized. (Emphasis added.)

See also 1965 Op. Att'y Gen. No. 65-173 (R.C. 9.01 applies to the records of the county recorder and permits the microfilming of them); 1961 Op. Att'y Gen. No. 2129, p. 184 (R.C. 9.01 expressly applies to all public officials enumerated therein and permits recording by the microfilm process). A county recorder is, therefore, authorized to record any of the documents listed in R.C. 317.13 by microfilming them.<sup>3</sup>

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<sup>1</sup> You have not asked and I am rendering no opinion on whether the contract was properly entered into by the county. For purposes of this opinion, therefore, I assume that the contract entered into for the purpose of microfilming records of the county recorder is a valid contract.

<sup>2</sup> Recording is understood to mean "the copying of [an instrument] into the public records kept for that purpose, by or under the direction or authority of the proper public officer." *Green v. Garrington*, 16 Ohio St. 548, 550 (1866).

<sup>3</sup> The authority to utilize the microfilm process to record the records of a county recorder is subject, however, to the approval and supervision of the county microfilming board, if the board of county commissioners has established such a board. R.C. 307.80; R.C. 307.802; R.C. 307.804. The

While a county recorder may microfilm records pursuant to R.C. 9.01, that statute prescribes few standards guiding the actual filming of records. Neither R.C. 9.01 nor any other statutory provision prohibits county records from leaving the physical custody of the county official entrusted with them. Nor is there a prohibition against temporarily surrendering physical custody of the records to have them filmed off-site from the recorder's office. I note, moreover, that the legislature, by enacting R.C. 307.802 and R.C. 307.806, has indirectly approved the temporary transfer of documents for microfilming. R.C. 307.802, applicable to counties with a county microfilm board, allows contracts for microfilm services with private or governmental services and also allows the establishment of a centralized county microfilm center. Further, R.C. 307.806 allows a county to enter into a contract with another county's microfilm board for microfilm services to county offices. Each of these options contemplates the filming of documents at a location remote from a particular county office.

Since the statutes from which is derived the power to have county records microfilmed off-site do not prescribe the method of exercising that power, the legislative intent is that the power be exercised in a reasonable manner. See *Jewett v. Valley Railway Co.*, 34 Ohio St. 601 (1878). Reasonableness depends on the surrounding circumstances and factors which are best determined by those at the local level. 1988 Op. Att'y Gen. No. 88-087.

A county recorder's reasonable exercise of the power to microfilm records must contemplate the recorder's duty to safeguard the records of his office. This duty is highlighted by the express wording of R.C. 9.01, which permits recording documents by microfilming "for the purpose of...preserving, and protecting the same." R.C. 317.07 also specifically requires each county recorder to deliver to his successor "all books, records and other instruments of writing belonging to the office." R.C. 149.351(A), which is applicable to all county offices, pursuant to R.C. 149.011(A) and (B), contains a similar provision, stating, in part, that all "records shall be delivered by outgoing officials and employees to their successors and shall not be otherwise removed, transferred, or destroyed unlawfully." R.C. 149.351(A) further provides that no records shall be "removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the records commissions provided for under sections 149.38 to 149.42 of the Revised Code."<sup>4</sup>

The proper exercise of the power to microfilm, thus, may be subject to compliance with the rules of the county records commission. One of the commission's duties is "to provide rules for the retention and disposal of records of the county." R.C. 149.38. Such rules may serve as guidelines for the transfer or removal of records. R.C. 149.351(A). No statutory definition or judicial opinion examines the use of the terms "transfer" and "removal" in R.C. 149.351. Lacking such definition, terms are interpreted according to their common meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). One of the various meanings of "transfer" is "to convey, carry, remove, or send from one person, place, or position to another." Webster's New World Dictionary (2d ed. 1984) 1509.

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provisions of R.C. 307.80 through R.C. 307.806, concerning the operation of county microfilm boards, are not applicable to the Seneca County recorder inasmuch as the Seneca County board of commissioners has not established a county microfilming board. If no county microfilm board is established, R.C. 9.01 permits a county office to "purchase or rent required equipment...and [to] enter into contracts with private concerns...for the development of film and the making of reproductions thereof as a part of any such photographic process." (Emphasis added). R.C. 9.01 does not expressly authorize a contract for the microfilming of the original documents.

<sup>4</sup> R.C. 149.38 creates in each county a county records commission. See also 1960 Op. Att'y Gen. No. 1348, p. 335 (any public officer or body having control of public records of the county is subject to the jurisdiction of the county records commission established by R.C. 149.38). The county recorder is a statutorily designated member of the county records commission. R.C. 149.38.

"Remove" means "to move (something) from where it is, lift, push, transfer, or carry away, or from one place to another." *Id.* at 1202. Both terms, thus, have definitions broad enough to require that any transfer or removal involving the moving of records from the custody of the county recorder be pursuant to the requirements of R.C. 149.351(A).

In 1986 Op. Att'y Gen. No. 86-057, at 2-315, I stated that the words "transferred" and "removed" do not refer "to the precise location in which records are kept but to the fact that they are to be *retained in proper custody and held securely.*" (Emphasis added.) I further explained that the "determination as to whether a particular movement of records is permissible under R.C. 149.351 must be made on a case-by-case basis, in light of all of the relevant facts." *Id.* Under the facts presented by your request for my opinion, it is clear that the county recorder is surrendering physical custody of the records of his office, albeit temporarily, to a private company. The records, therefore would be completely out of the control and custody of the county recorder and his employees. Under such circumstances, compliance with R.C. 149.351 is required before the records may be transferred or removed from the custody of the county recorder.<sup>5</sup>

It is therefore my conclusion, and you are so advised that:

1. Pursuant to R.C. 9.01 and R.C. 317.13, a county recorder may utilize microfilming to fulfill his statutory duties to record instruments under R.C. Chapter 317.
2. Subject to the provisions of R.C. 149.351(A), a county official may, pursuant to a valid contract, temporarily transfer physical custody of the records of his office to a private contractor to microfilm such records at the facilities of the contractor. The contract must incorporate sufficient safeguards to prevent loss, damage, mutilation or destruction of the records.

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<sup>5</sup> Inasmuch as the Seneca County board of commissioners has not established a county microfilming board, I expressly reserve my opinion as to whether R.C. 307.802 is a provision of law referred to in R.C. 149.351 that eliminates the necessity for compliance with a rule of a county records commission regarding transfer or removal of records.