

## OPINION NO. 65-173

**Syllabus:**

1. It is permissible to photograph the deed and at the same time microfilm the deed, whereby the microfilm would be retained for preservation of the record of the deed, and the photograph would be bound in a volume for use in the Recorder's office by the public.

2. It is permissible for the County Recorder to microfilm a deed only and thereupon have a copy prepared from the microfilm by electrostatic process and bind these copies into a volume for use by the public.

3. It is permissible for the County Recorder to microfilm the deed and to make available to the general public for use in the Recorder's office the microfilm alone by making available sufficient viewers to enlarge the microfilm.

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**To: Paul J. Mikus, Lorain County Pros. Atty., Elyria, Ohio**  
**By: William B. Saxbe, Attorney General, September 24, 1965**

Your request for my opinion is as follows:

"Our office has been requested by Leota B. Mitchell, Lorain County Recorder, to seek your opinion regarding the legality of the County Recorder using any one of the following procedures for the purpose of recording documents as required under the statutes:

"1. Is it permissible to photograph the deed and instantaneously microfilm the deed, whereby the microfilm would be retained for preservation of the record of the deed, and the photograph would be bound in a volume for use in the Recorder's office by the public?

"2. Is it permissible for the County Recorder to microfilm a deed only and thereupon have a copy prepared from the microfilm by electrostatic process and bind these copies into a volume for use by the public?

"3. Is it permissible for the County Recorder to microfilm the deed and to make available to the general public for use in the Recorder's office the microfilm alone by making available sufficient viewers to enlarge the microfilm?

"It is the view of our office that any three of the methods is permissible reading Ohio Revised Code Sec. 317.13 in conjunction with Section 9.01, notwithstanding the view of your predecessor in his Opinion No. 1389 issued in 1950."

The use of the microfilm process of reproduction for the purpose of recording documents as required by statute was opined to be permissible in Opinion No. 2129, Opinions of the Attorney General for 1961, page 184. The syllabus of that opinion is as follows:

"Pursuant to the provisions of Section 9.01, Revised Code, the public officials therein enumerated, are authorized to use the microfilm process of reproduction for the recording, filing, maintaining and preserving of records they are required to record, file, maintain and preserve, and to dispose of the original records or copies of such records in accordance with the provisions of Sections 149.31, 149.32, 149.37, 149.38, 149.39, 149.41 and 149.42, Revised Code."

Opinion No. 1389, Opinions of the Attorney General for 1950, page 39, was overruled in 1955. The syllabus of the overruling opinion, Opinion No. 5667, Opinions of the Attorney General for 1955, page 371, is as follows:

"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."

Section 9.01, Revised Code, provides for photostat or microfilm recording 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 and may enter into contracts with private concerns or other governmental agencies for the development of film and the making of reproductions thereof as a part of 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."

This code section applies to any records that the County Recorder would be required to maintain according to Section 317.08, Revised Code, and clearly permits using the first two procedures enumerated in your letter of request.

Although Section 317.29, Revised Code, provides for transcribing defaced or injured records into new books there is no statutory requirement that records take the form of a book or bound volume.

Section 317.07, Revised Code, requires a retiring County Recorder to deliver his seal, books, papers, and records to his successor. This supports the conclusion that records can be other than books. Such an interpretation is consistent with the language and meaning of Section 9.01, Revised Code, and supports the use of the third procedure enumerated in your letter of request. To satisfy the code sections setting forth requirements for indexing and endorsing records and instruments recorded, the microfilm to be viewed must be maintained in a manner permitting reference thereto by number, file, page, volume, and deed book number. The code sections to which this is applicable are Sections 317.09, 317.12, 317.18, 317.20, 317.201, 317.24, and 317.29, Revised Code.

In summary, it is my opinion that:

1. It is permissible to photograph the deed and at the same time microfilm the deed, whereby the microfilm would be retained for preservation of the record of the deed, and the photograph would be bound in a volume for use in the Recorder's office by the public.

2. It is permissible for the County Recorder to microfilm a deed only and thereupon have a copy prepared from the microfilm by electrostatic process and bind these copies into a volume for use by the public.

3. It is permissible for the County Recorder to microfilm the deed and to make available to the general public for use in the Recorder's office the microfilm alone by making available sufficient viewers to enlarge the microfilm.