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PUBLIC OFFICIALS ENUMERATED IN SEC. 9.01, R.C. ARE AUTHORIZED TO USE THE MICROFILM PROCESS OF REPRODUCTION FOR RECORDING, FILING, MAINTAINING AND PRESERVING OF RECORDS AND ARE AUTHORIZED TO DISPOSE OF THE ORIGINAL RECORDS OR COPIES OF SUCH RECORDS IN ACCORDANCE WITH PROVISIONS OF §§149.31, 149.32, 149.37, 149.38, 149.39, 149. 41 and 149.42, R.C.

SYLLABUS:

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.

Columbus, Ohio, April 14, 1962

Hon. Bruce C. Harding, Archivist, The Ohio Historical Society
1234 East Broad Street, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“As provided in Section 149.31, Revised Code, I have been requested to render advice and aid to several counties interested

in taking action under Section 149.38, Revised Code, which sets forth a system of records disposal for counties. In response to a previous request in May, 1960 (Opinion No. 1348), you replied as follows:

“ ‘County offices may dispose of any records which are microfilmed by applying to the county records commission and complying with the procedure outlined in Section 149.38, Revised Code. (Opinion No. 5667, Opinions of the Attorney General for 1955, page 371, approved and followed.)’

“In my discussions of this matter with various public officials, some have questioned the necessity of even creating paper copies. If an office may substitute microfilm for the paper copy, why spend the time, effort, and money creating a paper copy? These officials have maintained that Section 9.01, Revised Code, allows public officials to utilize microfilm for recording, filing, maintaining or preserving the records of their respective offices.

“Therefore, I am requesting your opinion on the following question:

“ ‘May public officials utilize a microfilm system for the recording, filing, maintaining or preserving those records their offices are required to record, file, maintain, or preserve and dispose of the originals or other copies as provided in Sections 149.31, 149.32, 149.37, 149.38, 149.39, 149.41, and 149.42 of the Revised Code?’ ”

The opinion of the prosecuting attorney of Hamilton County dated January 21, 1960, which you enclosed with your letter of request, deals with the question of whether or not the clerk of courts is authorized to abandon the present photostatic process in making up the books he is required to keep, and substitute in lieu thereof, a microfilm or micrographic process, and to utilize such films in jackets as a means of reference.

The prosecuting attorney ruled that Opinion No. 1389, Opinions of the Attorney General for 1950, is no longer controlling, and concluded:

“The clerk of courts has authority to abandon the present photostatic process of making up records required under R.C. 2303.12 and substitute in lieu thereof microfilm records as authorized by Section 9.01 R.C., provided the original documents are maintained on file and until the eventual destruction is accomplished only in accordance with the provisions of Section 149.38 R.C.”

I concur with the opinion above quoted. The conclusion reached therein, although it dealt only with the office of the clerk of courts, is

consonant with my Opinion No. 1348 of May 11, 1960 to which reference is made in your present inquiry. This is implicit in paragraphs five and six of the syllabus of Opinion No. 1348, *supra*, which read:

“5. County offices are not required under the provisions of Section 149.38, Revised Code, to secure the approval of the county records commission to dispose of copies of a record as long as the office retains the original, and in those cases where the office retains a copy in the first instance, then records, commission approval is not necessary for the disposition of extra copies as long as the office retains the records copy.

“6. County offices may dispose of any records *which are microfilmed* by applying to the county records commission and complying with the procedure outlined in Section 149.38, Revised Code. (Opinion No. 5667, Opinions of the Attorney General for 1955, page 371, approved and followed.)”

(Emphasis added)

It will be noted that under the above quoted paragraphs of the syllabus in Opinion No. 1348, *supra*, the specified public officers are not precluded from microfilming original papers and documents. They are only precluded from disposing of the original papers and documents until the provisions of Section 149.38, Revised Code have been complied with. In fact, in so far as county officers are concerned, such section expressly provides that county records, unless they are no longer of administrative, legal or fiscal value, may not be put on the disposal list if they have not been microfilmed. In other words, no other process will do except the microfilming process, to open the door for the disposition of county records in view of the provisions contained in the second paragraph of Section 149.38 *supra*, which reads:

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“The functions of said commission shall be to provide rules and regulations for retention and disposal of public records of the county and to review records disposal lists submitted by county offices. The disposal lists shall contain those records which have been microfilmed or no longer have administrative, legal, or fiscal value to the county or to the citizens thereof. Such records may be disposed of by the commission pursuant to procedure hereinafter outlined.

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An examination of the history of Section 9.01, Revised Code, discloses that public officers have been authorized to use the microfilming process of reproduction since 1945 (121 Ohio Laws, 338). The photostatic process

in which, incidentally, the final product appears on paper, instead of on film, was authorized earlier, and is to this day included in such section as one of the many processes that are sanctioned therein.

It is not clear to me whether "paper copies," mentioned in your inquiry have reference to copies produced on ordinary paper by means of placing a sheet of carbon paper underneath the paper on which the writing, by hand or typewriter, is done, or to copies produced by a photostatic or any other process in which the resulting copy appears on paper. Be that as it may, it appears clear that Section 9.01, *supra*, which applies to all state offices and officers, and to all its political subdivisions and their officers, while it does not prohibit copying by hand or typewriter, expressly authorizes the reproduction of

"any record, document, plat, court file, paper, or instrument in writing * * * 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 * * *."

(Emphasis added)

In answer to your specific question, it is my opinion and you are advised that 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.

Respectfully,

MARK McELROY

Attorney General