

1389

1. MICRO - FILM—MICRO - PHOTOGRAPHIC PROCESS—  
CLERK OF COURTS—MAY NOT ABANDON PRESENT  
METHOD OF MAKING UP RECORDS—MAY NOT SUB-  
STITUTE MICRO-FILM OR MICRO-PHOTOGRAPHIC  
PROCESS—MINIATURE FILMS — RECORDS — SECTIONS  
2883, 32-1 G. C.—AMENDED SENATE BILL 14, 98 GENERAL  
ASSEMBLY.

2. STATUTE—INTENT NOT TO ACT AS SUBSTITUTE FOR ORIGINAL RECORD, DOCUMENT, PLAT, COURT FILE, PAPER OR INSTRUMENT IN WRITING—INTENT TO PRESERVE OLD RECORDS OR INSTRUMENTS IN WRITING FOR SAFEKEEPING AND TO REDUCE STORAGE SPACE.

Columbus, Ohio, January 18, 1950

Hon. Frank T. Cullitan, Prosecuting Attorney  
Cuyahoga County, Cleveland, Ohio

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.

Dear Sir:

Your request for my opinion is as follows:

“In your Opinion No. 1077 in response to an inquiry of our Clerk of Courts you concluded that the said clerk has the right to photograph the record he is required to make under Section 2883 G. C. It seems that what the clerk wanted was an opinion as to whether he could use micro-film to make up the record and preserve the micro-film as the record of the case. This was not made clear in his original request.

“Section 2883, G. C. provides: ‘Unless by order on the Journal a Record is dispensed with, the clerk shall make a complete record of each cause within six months after final judgment or order of the proper court.’

“Section 11605 G. C. provides: ‘Except as hereinafter provided, the Clerk shall make a complete record of every cause as soon as it is finally determined, unless such record, or some part thereof be waived.’

“Section 11607 G. C. provides: ‘The record shall be made up from the petition, the process, return, pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the Court. If items of an account or copies of papers attached to pleadings, are voluminous, the court may order the record to be made by abbreviating them or inserting a pertinent description thereof, or by omitting them entirely.’

“Section 2878 G. C. provides: ‘The Clerk shall keep at least five books, to be called the appearance docket, trial docket, journal, record and execution docket. \*\*\*’

“Presently the record is *made up* by typing all the proceedings of the Court as enumerated in Sec. 11607 G. C., or by photostatic process, then bound into volumes, numbered consecutively and labeled RECORD.

The Clerk of Courts now requests your opinion on the following question:

“Has the Clerk of Courts, in view of the foregoing statutes, a right, under Sec. 32-1 of the General Code, as amended by Amended Senate Bill No. 14, 98th General Assembly, effective July 28, 1949, to abandon the present typewritten or photostatic process of making up the record and substituting in lieu thereof, micro-film or micro-photographic process, which accurately copies or reproduces all of these original pleadings on miniature films, and preserve these films as the *RECORD* of the case?”

Your request, as I see it, is whether a micro-film or some other micro-photographic process may constitute the original record that a clerk of courts is required to make under Section 2883 General Code. Although I am unable to find any statutory authority that would prevent this, it is my opinion that this procedure is not proper nor was it the purpose for which Section 32-1 General Code, was enacted as amended. In my opinion Section 32-1 contemplates the making of an original instrument by other than photographic methods and that the permission granted by Section 32-1 was devised as a method of preserving the original and as a means of occupying less space. This is evidenced by the language used in said section which provides that the original filing record shall not be destroyed or disposed of:

“\* \* \* unless and until the time for the commencement and prosecution of any legal proceedings based on any such record or instrument shall have elapsed and, in no event unless and until

twenty-one years shall have elapsed after the date of the filing of any such original instrument or document for record.”

My opinion is further strengthened by the fact that micro-film or micro-photographic records, while they may be excellent for preservation, do not serve as a substitute for the original instrument. They are very small and practically unreadable without the aid of an enlarging machine especially designed for that purpose. In order to examine such photographic records each photograph would necessarily have to be inserted in such enlarger, thereby making it a very cumbersome and tedious operation for both the person examining the record and the personnel of the office involved.

It is therefore my opinion in specific answer to your question, that the clerk of courts may not under the provisions of Section 32-1, General Code, as amended by Amended Senate Bill No. 14, 98th General Assembly, abandon the present method of making up the record he is required to make under Section 2883, General Code, and substitute in lieu thereof micro-film or micro-photographic process, which accurately copies or reproduces all of these original pleadings on miniature films, and preserve these films as the *record* of the case.

Respectfully,

HERBERT S. DUFFY  
Attorney General.