

OPINION NO. 75-055**Syllabus:**

1. In review proceedings before the Ohio Supreme Court, the Commission will be in compliance with the procedural requirements of R.C. 4903.21 and the current rules of practice of the Ohio Supreme Court if the transcript of proceedings - reproduced from microfilm records - is certified to the clerk as true and accurate.

2. In evidential proceedings initiated pursuant to R.C. 4905.60, microfilm records may be submitted and received as evidence once properly identified, pursuant to R.C. 9.01 and R.C. 2317.41.

3. Certification of original records prior to microfilming and use of a declaration of intent (to destroy original documents and maintain records on microfilm) are not required under Ohio law, but may be employed as safeguard methods to ensure the responsible and accurate development of microfilm as a substitute for records of original papers.

To: C. Luther Heckman, Chairman, Public Utilities Commission, Columbus, Ohio
By: William J. Brown, Attorney General, August 18, 1975

I have before me the request of the Public Utilities Commission concerning a certification and a declaration to be used by the Commission in connection with the destruction of original Commission files subsequent to microfilming. Specifically the Commission has asked:

1. Whether records reproduced from microfilm may be used in review proceedings initiated pursuant to Revised Code Section 4903.21 and in proceedings initiated pursuant to Revised Code Section 4905.60 - or whether certified copies produced from the microfilmed records must be used; and
2. Whether a proposed declaration and certification would conform with Ohio law and allow the Commission to microfilm records without being in violation of any duty imposed upon the Commission.

The Commission's request is for further and supplemental advice to that provided by 1975 Op. Att'y Gen. No. 75-013 in which I concluded that:

"1. The records of the Public Utilities Commission may be reproduced on microfilm or similar process, pursuant to R.C. 9.01."

"2. Original records of the Public Utilities Commission which have been reproduced on microfilm pursuant to R.C. 9.01 may be destroyed with the permission of the State Records Commission, pursuant to R.C. 149.37.

"3. Microfilmed copies of official records, made pursuant to R.C. 9.01, have the same effect at law as the original records, and may be used for all official purposes."

I affirm the conclusions reached in 1975 Op. Att'y. Gen. No. 75-013. R.C. 9.01 does allow microfilmed copies of official records to be used for all official purposes. However, the question to be answered here is whether the requirements of R.C. 4903.21 (concerning review proceedings) and R.C. 4905.60 (concerning actions initiated by the Commission) impose additional duties which might preclude the use of microfilmed records or require additional procedural steps to be taken.

In regard to proceedings for review of Commission action by the Ohio Supreme Court, R.C. 4903.21 provides:

"Upon service or waiver of the notice of appeal as provided in section 4903.13 of the Revised Code, the public utilities commission shall forthwith transmit to the clerk of the supreme court, a transcript of the journal entries, the original papers or transcripts thereof, and a certified transcript of all evidence adduced upon the hearing before the commission in the proceeding complained of which documents shall be filed in said court."

A careful review of this section reveals no duty to file any original papers. Neither do the Rules of Practice of the Ohio Supreme Court require the filing of original papers. Rule I, Section 3 of these Rules addresses the requirements of R.C. 4903.21 describing the statutory provision only as one which provides for transmission of a complete transcript of proceedings. Accordingly, in review proceedings the duty of the Commission is to be thorough and accurate in developing and transmitting its record of proceedings; but there is no requirement that original documents be used.

As a result of telephone conversations had with Commission offices subsequent to the present request, I understand that the Commission's policy is to submit the transcript of proceedings in a case to the clerk of the Supreme Court accompanied by an originally executed certification that the transcript is true and accurate. This practice is appropriately continued where the transcript is composed of copies produced from previously microfilmed, original documents. That is, there is no requirement to certify the documents prior to microfilming. The important function of the certification is to verify to the Supreme Court that the transcript (whether copies or originals) is true and accurate. Insofar as certification of the documents before the originals are microfilmed and destroyed may ensure the accuracy of the records microfilmed, use of certification at that early stage may serve a useful function--but it is not required.

In the Commission's request the use of a proposed "Declaration of Intent and Purpose" has been described. This document would contain statements that original records are to be microfilmed and destroyed pursuant to approval by the State Records Commission, but only after the microfilm has been inspected for completeness; and that the microfilmed records are the actual records of the Commission resulting from the normal course of business. This declaration is to be executed by an employee of the Commission subsequent to the microfilming process and prior to destruction of the original documents.

The question is whether this declaration complies with Ohio law and whether its use would allow the proposed microfilming to be performed without violation of duties imposed by the Commission. I find no duty imposed upon the Commission in this regard. Accordingly, use of the declaration, like certification prior to microfilming, is not required but may be employed as a means of ensuring that the microfilming process is responsibly undertaken and completed.

The second primary concern of the Commission is with the use of documents reproduced from microfilm records, in proceedings initiated by the Commission pursuant to R.C. 4905.60 which provides in pertinent part:

"[T]he attorney general, upon the request of the Commission, shall commence and prosecute such action, or proceeding in mandamus, by injunction, or by other appropriate civil remedies in the name of the state, as is directed by the commission against . . . [a] public utility or railroad, alleging the violation complained of and praying for proper relief."

It is clear that actions initiated pursuant to this section would be of an evidential sort. As such your attention is directed to R.C. 9.01 which provides for the use of microfilmed records in such proceedings stating in pertinent part:

"[M]icrofilms . . . 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 . . . could have been so introduced and received. Certified or authenticated copies or prints of such . . . microfilms shall be admitted in evidence equally with the original . . . microfilms."

Two things must be emphasized here. First, unlike review proceedings discussed above, evidential proceedings initiated pursuant to R.C. 4905.60 require the introduction of microfilm records (or certified microfilm copies) themselves -- not just paper copies reproduced from microfilm. Second, in an evidential proceeding the microfilm records must be identified by the appropriate Commission officer.

R.C. 2317.41 also permits the use of microfilm in an evidential proceeding. Pursuant to R.C. 2317.41 "photograph" includes microfilm, and that section provides in pertinent part:

"To the extent that a record would be competent evidence under section 2317.40 of the Revised Code [relating to business records], a photograph of such record shall be competent evidence if the custodian of the photograph, or the person under whose supervision such photograph was made testifies to the identity of and the mode of making such photograph, and if, in the opinion of the trial court, the record has been destroyed or otherwise disposed of in good faith in the regular course of business, and the mode of making such photograph was such as to justify its admission."

Here again, as with R.C. 9.01, the allowance of the use of microfilm does not encompass use of paper copies reproduced from microfilm, and the microfilm must be identified by the appropriate persons.

In practice, use of microfilmed records in proceedings instituted under R.C. 4905.60 should present no problem. No question as to the "good faith, in the regular course of business" destruction of original papers should arise inasmuch as the Commission will have received the appropriate authorization to destroy originals from the State Records Commission. Further, it is probable that once microfilm records have been received in evidence, a trial court would permit substitution of certified paper copies reproduced from the microfilm for the microfilm records themselves.

Based upon the foregoing, and in specific answer to your questions, it is my opinion and you are so advised, that:

1. In review proceedings before the Ohio Supreme Court, the Commission will be in compliance with the procedural requirements of R.C. 4903.21 and the current rules of practice of the Ohio Supreme Court if the transcript of proceedings - reproduced from microfilm records - is certified to the clerk as true and accurate.

2. In evidential proceedings initiated pursuant to R.C. 4905.60, microfilm records may be submitted and received as evidence once properly identified, pursuant to R.C. 9.01 and R.C. 2317.41.

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