

Opinion No. 60-179

September 29, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Joseph F. Halpin State Records Administrator State Records Center 404 Montezuma Street Santa Fe, New Mexico

QUESTION

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What disposition should be made of public records in the custody of a District Court Clerk after those records have been microfilmed?

CONCLUSION

See analysis.

OPINION

{*573} ANALYSIS

The District Courts are branches of the Judicial Department of the State government, and come within the definition of "agency", as that term is used in the Public Records Act, N.M.S.A., 1953 Compilation, §§ 71-6-1 to 71-6-17 (P.S.). See **State ex rel Ward v. Romero**, 17 N.M. 88, 125 P. 617 (1912). Under the provisions of § 71-6-7, the State Records Administrator may inspect and survey the records of a District Court. After such a survey, § 71-6-9 provides that the administrator, the Attorney General, and the agency official in charge of the records of that agency (the District Court Clerk), must together determine what disposition is to be made of the records. They may make any of three determinations: (1) that the records should be retained in the custody of the agency, (2) that the records should be transferred to the State Records Center, or (3) that a recommendation for destruction of the records should be made to the State Records Commission. Thus, you should consult with the Clerk {*574} of the District Court involved, and with the Attorney General, to determine what disposition of District Court records is desirable.

There is an alternative approach to the question of records that have been microfilmed. Section 71-6-15 specifically permits any public officer to microphotograph or reproduce on film any public records in his custody. After such reproduction on film, any public officer may cause the records to be disposed of in accordance with §§ 71-6-9 to 71-6-11. Public officers of all kinds are permitted to avail themselves of the State Records disposal system, after reproducing their records on film; there is nothing in the Public Records Act limiting the system to officers of the State government. Thus, if any public

officer sees fit to offer his records to the State Records Administrator, after microfilming them, then the procedure to determine the disposition of the records is exactly as outlined before, with the State Records Administrator surveying the records involved and determining, in conjunction with the Attorney General and the agency official involved, what disposition shall be made of them.

Bear in mind that, under § 71-6-11, no public record, not even one that has been microfilmed, may be destroyed in less than three years from the time of its original creation or filing.

By: Norman S. Thayer

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