

## **Opinion No. 61-36**

May 3, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

**TO:** Mr. Willard E. Lewis, Chief, Local Government Division Department of Finance and Administration, Santa Fe, New Mexico

### **QUESTION**

#### QUESTIONS

1. Does any state agency have power to prescribe regulations for the retention and destruction of municipal records?
2. Is a systematic program of destruction of municipal records permissible under existing statutes?

#### CONCLUSIONS

1. No.
2. See Analysis:

### **OPINION**

#### ANALYSIS

Attorney General's Opinion No. 60-181, September 30, 1960, dealt with your first question and answered it in the negative. We enclose a copy of that opinion for your use.

In answering your second question, we believe a distinction should be drawn between records that the municipality is required to keep by state law, and records manufactured by the municipality under its own volition and for its own purposes.

If a municipality is required to make or keep a record by some state law, it is our opinion that with one exception, there is no law authorizing the municipality to destroy, give away, or otherwise dispose of that record. Section 71-6-15, N.M.S.A., 1953 Compilation, permits municipalities to transfer records to the state records administrator, after microfilming the records. Under existing laws, the municipality has no choice but to retain the record for all time, unless it can afford the microfilming process.

We feel, however, that records made or kept by the municipality under its own authority and for its own purposes may be disposed of as the municipality sees fit. What the municipality has power to create, it has power to destroy, but what is created by the State, or by authority of the State, can only be destroyed by the State, or with its permission.