

Opinion No. 79-16

April 13, 1979

OPINION OF: Jeff Bingaman, Attorney General

BY: Deborah A. Moll, Assistant Attorney General

TO: Joseph Halpin, State Records Administrator, The State Records Center and Archives, 404 Montezuma Street, Santa Fe, New Mexico 87501

PUBLIC RECORDS

County clerks may microfilm the newspapers required by them to be kept by law and may destroy the originals once they have been properly microfilmed and certified.

QUESTIONS

May county clerks microfilm the newspapers they are required by law to maintain and if so, may they destroy the original papers once microfilmed?

CONCLUSIONS

Yes.

ANALYSIS

This Opinion overrules Attorney General Opinion No. 72-5, dated January 20, 1972.

OPINION

Pursuant to Section 4-40-7 NMSA 1978, county clerks are required to subscribe to the newspapers printed and published in their respective counties. Section 4-40-8 NMSA 1978 further requires the county clerks, under penalty of law, to "receive and preserve every copy of the paper or papers so subscribed" and to keep these papers in bound volumes for the use of the courts and the public generally. No provision is made in the above-mentioned statutes for the microfilming of these newspapers.

However, Sections 14-1-1 to 14-1-8 NMSA 1978, deal generally with the preservation and destruction of records and specifically with the microfilming of such records. Section 14-1-5, NMSA 1978 provides as follows:

"Any public officer of the state may cause any or all records, papers or documents kept by him to be photographed, microfilmed, microphotographed or reproduced on film. Such photographic film and the device used to reproduce such records on such film shall be one which accurately reproduces the original thereof in all details."

Section 14-1-4 NMSA 1978 defines the term public officer, for the purpose of microfilming records, as including county officials. Furthermore, Section 14-1-6 NMSA 1978 provides that the microfilms done pursuant to Section 14-1-5, **supra**, are deemed the original records for all purposes and that certified copies of the microfilm are the same as certified copies of the originals.

As documents kept by public officers, the newspapers maintained by the county clerks may, therefore, be microfilmed pursuant to Section 14-1-5, **supra**. So long as the microfilm of the newspapers is accessible to the public, the statutory requirement that the county clerk preserve every copy of the newspapers printed and published in the county would be satisfied.

Section 14-3-15 NMSA 1978, further specifies the authority of public {38} officials to microfilm records kept by them and defines the authority of the State Records Administrator to oversee such reproduction. Pursuant to Section 14-3-15 any public officer of the "state or of any district or political subdivision may cause any public records, papers or documents kept by him to be photographed, microphotographed or reproduced on film."

Subsection E of Section 14-3-15, **supra**, provides that the microfilms reproduced in accordance with the requirements of Section 14-3-15, **supra**, are to be deemed the original records for all purposes and certified copies of the microfilms are to be considered certified copies of the originals. Therefore, pursuant to Section 14-3-15, **supra**, county clerks, as public officials of a political subdivision of the state, may microfilm the papers kept by them. Furthermore, once reproduced, the microfilms are the same as the original documents under the terms of Section 14-3-15(E), **supra**.

Subsection F of Section 14-3-15, **supra**, deals with the destruction of the paper originals once microfilmed and provides as follows:

"Whenever such photographs, microphotographs or reproductions on film are properly certified and placed in conveniently accessible files, and provisions are made for preserving, examining and using them, any public officer may cause the original records from which the photographs or microphotographs have been made, or any part thereof, to be disposed of according to methods prescribed by Sections 14-3-9 through 14-3-11 NMSA 1978. Copies shall be certified by their custodian as true copies of the originals before the originals are destroyed or lost, and the certified copies shall have the same effect as the originals. Copies of public records transferred from the office of origin to the administrator or his deputy, shall have the same legal effect as if certified by the original custodian of the records."

Subsection F, therefore, permits the destruction of the originals once the microfilm reproductions have been certified. However, Subsection F further requires that the original records be disposed of according to the methods prescribed in Sections 14-3-9 to 14-3-11 NMSA 1978. Essentially Sections 14-3-9 to 14-3-11, **supra**, require that

public records maintained by agencies be destroyed only by order of the State Records Commission.

Section 14-3-15, **supra**, pertains to public officials generally. However, Sections 14-3-9 to 14-3-11, **supra**, apply only to agencies as so defined in the Public Records Act, and county and municipal offices are not considered agencies as that term is used in the Public Records Act. See Opinion of the Attorney General, No. 60-181, dated September 30, 1960. Thus, county officials are not required to comply with the specific terms of Sections 14-3-9 to 14-3-11, **supra**, when they destroy the records kept by them; they are only required to notify the State Records Administrator of any proposed destruction and give the Administrator the opportunity to take custody of the records. Sections 14-3-9 to 14-3-11, **supra**, and Section 14-3-15(F), **supra**, therefore, would appear contradictory.

It is well established, however, that statutes should be construed in such a manner that they are consistent, harmonious, and reasonable. **State ex rel. Clinton Realty v. Scarborough**, 78 N.M. 132, 429 P.2d 330 (1967). To interpret Section 14-3-15(F), **supra**, as requiring {*39} public officials not included within the term "agency" as used in the Public Records Act to comply with the conditions of Sections 14-3-9 to 14-3-11, **supra**, when destroying the originals once microfilmed when the Act, generally, does not require them to comply with its terms when permanently destroying records which have not been microfilmed, would be inconsistent and unreasonable. Therefore, we conclude that the conditions, if any, imposed upon the destruction of an original once microfilmed by the provision of Section 14-3-15, **supra**, that the originals be disposed of according to the methods prescribed by Sections 14-3-9 to 14-3-11, **supra**, do not apply to county officers.

Section 14-3-15, **supra**, therefore does not limit the destruction of original documents once microfilmed by county officials; however, Section 14-1-8 NMSA 1978 might be interpreted as imposing such restrictions. It provides as follows:

"An official charged with the custody of any records and who intends to destroy those records, shall give notice by registered or certified mail to the state records administrator, state records center, Santa Fe, New Mexico, of the date of the proposed destruction and the type and date of the records he intends to destroy. The notice shall be sent at least sixty days before the date of the proposed destruction. If the state records administrator wishes to preserve any of the records, the official shall allow the state records administrator to have the documents by calling for them at the place of storage."

Although not bound by the comprehensive review established by Section 14-3-9 to 14-3-11, **supra**, a county official, such as a county clerk, must notify the State Records Administrator and may not destroy the record pending a decision by the Administrator regarding the retention of the document. It is our opinion that this requirement applies only to the intended destruction of an original of which no microfilm copies exist or to the destruction of the master-copy of the microfilm reproduction.

The statutes governing the preservation, destruction, and microfilming of records are in **pari materia** and should, therefore, be construed together in order to give effect to every provision. See **Chavez v. Valencia County**, 86 N.M. 205, 521 P.2d 1154 (1974). The purpose of Section 14-1-8, **supra**, is to prevent the destruction of records which the State Records Center considers worthy of retention. The primary purpose would be the preservation of the content of the record and not the record as such. The purpose served by microfilming is two-fold. Microfilm preserves the substance of the record and adds to the efficiency of record storage. To interpret Section 14-1-8, **supra**, as requiring the approval of the Records Center prior to the destruction of originals once microfilmed would defeat the efficiency promoted by microfilm systems, but would not promote record preservation since the microfilm itself preserves the content of the record and makes the original superfluous. Therefore, we conclude that if microfilmed and certified pursuant to Section 14-3-15, **supra**, the originals may be destroyed without any action on the part of the Records Administrator. This would include the newspapers required by Section 4-40-8, **supra**, to be kept by the county clerks.

Further, that such destruction of the originals once microfilmed is contemplated by the statutes authorizing microfilming is indicated by {40} the fact that these statutes provide that the microfilm is to be deemed the original record for all purposes and that certified copies of the microfilm are to be deemed certified copies of the original. An interpretation of the statute that would require the original of the record to be preserved after microfilming would render the provisions that the microfilm be deemed the original unnecessary. Such an interpretation would be contrary to the rules of statutory construction and should therefore be avoided. See **Cromer v. J.W. Jones Const. Co.**, 79 N.M. 179, 441 P.2d 219 (1968).

We conclude that the county clerks may microfilm the newspapers maintained by them and once properly microfilmed and certified, the original papers may be destroyed without notification or action on the part of the State Records Administrator. The State Records Administrator, however, should be notified pursuant to Section 14-3-7, **supra**, when an original document which has not been reproduced on microfilm is to be destroyed or when the mastercopy of the microfilm reproduction of a record is to be destroyed.

ATTORNEY GENERAL

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