

**Opinion No. 79-26**

June 22, 1979

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Deborah A. Moll, Assistant Attorney General

**TO:** Joseph Halpin, Administrator, The State Records Center & Archives, 404 Montezuma Street, Santa Fe, New Mexico 87503

**PUBLIC RECORDS**

Counties are subject to Subsections A, C, E and F of Section 14-3-15 NMSA 1978, governing the microfilming of public documents by public officials.

**QUESTIONS**

Are counties subject to any portion of Section 14-3-15 and Section 14-3-17 NMSA 1978 governing the microfilming of public documents by public officials?

**CONCLUSIONS**

Yes, counties are subject to Subsections A, C, E and F of Section 14-3-15 NMSA 1978.

No, counties are not subject to Subsections B, D, and G of Section 14-3-15, **supra**, or to Section 14-3-17, NMSA 1978.

**ANALYSIS**

Section 14-3-15, **supra**, provides as follows:

"A. 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.

"B. The state records administrator shall review any proposed state agency microphotography system and shall advise and consult with the agency. The administrator has the authority to approve or disapprove the system of any state agency.

"C. The microphotography system used pursuant to this section shall comply with the minimum standards approved by the New Mexico commission of public records. The microphotography system used to reproduce such records on film shall be one which accurately reproduces the original in all details.

"D. The administrator shall establish and maintain an inventory of all microfilm equipment owned or leased by state agencies. The administrator is authorized to arrange the transfer of microphotography equipment from a state agency which does not use it, and which has released it, to a state agency needing such equipment for a current microphotography system.

"E. Photographs, microphotographs or photographic film made pursuant to this section shall be deemed to be original records for all purposes, including introduction in evidence in all courts and administrative agencies. A transcript, exemplification or certified copy, for all purposes, shall be deemed to be a transcript, exemplification or certified copy of the original.

"F. Whenever such photographs, microphotographs or reproductions on film are properly certified and are placed in conveniently accessible files, and provisions are made for preserving, examining and using {\*63} 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, when certified by the administrator or his deputy, shall have the same legal effect as if certified by the original custodian of the records.

"G. For the purposes of this Section, 'state agency' shall include the district courts."

### OPINION

It is the opinion of this office that Subsections A, C, E and F of Section 14-3-15 NMSA 1978 are applicable to county officials and the microphotography undertaken by them. It is also the opinion of this office that Subsections B, D and G of Section 14-3-15, **supra**, and Section 14-3-17 NMSA 1978 apply only to state agencies as that term is used in the Public Records Act and not to counties or other governmental organizations. We further conclude that the State Records Administrator has the authority to ensure compliance by county officials with the applicable provisions of Section 14-3-15, **supra**.

Pursuant to Subsection A of Section 14-3-15, **supra**, any public officer of the state or of any district or political subdivision may microfilm any public records, papers or documents maintained by him. Furthermore, pursuant to Subsection C of Section 14-3-15, **supra**, any microphotography system used pursuant to Section 14-3-15, **supra**, must comply with minimum standards established by the State Commission of Public Records and must reproduce the original accurately in all detail. Microphotography system is defined by Section 14-3-2(F) of the Public Records Act as "all microphotography equipment, services and supplies."

Section 14-3-15, **supra**, is a grant of general authority to all public officers to microfilm any public records, papers or documents kept by them. Furthermore, Section 14-3-15,

**supra**, specifically provides that any microfilming done pursuant to it must comply with certain standards and defines the authority of the State Records Administrator over such microphotography. Where the Public Records Act pertains, by its terms, to public officials generally, it should be applied as such. See Opinion of the Attorney General, No. 60-181, dated September 30, 1960. Subsection A of Section 14-3-15, **supra**, is applicable to public officers of the state and of any of its district and political subdivisions and permits the microfilming of not only public records, but also all papers and documents maintained by these officials. Subsection A is limited neither to agencies as that term is defined by the Public Records Act nor to public records as defined by the Act. Except where so limited, Section 14-3-15, **supra**, must then apply to public officials generally, including county officials. Any microphotography by county officials of records maintained by them is, therefore, done pursuant to Section 14-3-15, **supra**. Since Subsections C, E and F apply to microphotography done pursuant to Section 14-3-15, **supra**, Subsections C, E and F apply to the microphotography done by county officials.

{\*64} Subsections B and D of Section 14-3-15, **supra**, have, however, been interpreted as applicable only to state agencies and not to other governmental organizations whether of the state or of its political districts or subdivisions. See Opinion of the Attorney General, No. 78-23, dated December 19, 1978. Therefore, the State Records Administrator does not have the broad authority of consultation, review, approval and disapproval over the microphotography systems of counties that he has over the systems of state agencies pursuant to Section 14-3-15(B), **supra**.

Section 14-3-17, **supra**, is similarly restricted to state agencies. It provides:

"Upon the effective date of this act, the state records administrator shall review any existing state agency microphotography system and, after consultation with the agency, shall approve, disapprove or require modification to the system. For the purposes of this section, 'state agency' shall include the district courts. Upon disapproval, the agency shall cease to use the system. Modifications shall be completed within a period specified by the administrator."

By its terms Section 14-3-17, **supra**, only applies to state agencies and not to governmental organizations generally. Therefore, pursuant to Section 14-3-17, **supra**, the State Records Administrator has the authority to review and approve or disapprove of any pre-existing microphotography systems of state agencies but not of other governmental organizations, generally, or counties, specifically. However, nothing in Section 14-3-15, **supra**, or Section 14-3-17, **supra**, would exempt county microphotography systems which existed prior to the enactment of the Public Records Act from the minimum standards for microphotography approved by the Commission of Public Records pursuant to Section 14-3-15(c), **supra**.

Section 14-1-5 NMSA 1978 also permits county officials to microfilm the records maintained by them. However, Section 14-3-15, **supra**, is the more specific statute and is controlling. **Lopez v. Barreras**, 77 N.M. 52, 419 P.2d 251 (1966).

Finally, as the person charged with the overall administrative responsibility for carrying out the purposes of the Public Records Act pursuant to Section 14-3-6 NMSA 1978 the State Records Administrator has the authority to ensure compliance by county officials with the standards specified for microphotography in Section 14-3-15, **supra**.

**ATTORNEY GENERAL**

Jeff Bingaman, Attorney General