



Delaware County
RECORDS CENTER

Minutes from the Delaware County Records Commission

January 18, 1990

This meeting of the Delaware County Records Commission was held in the County Commissioners Hearing Room and was presided over by Roy Jackson, chairman.

Members present: Roy Jackson, Kay Conklin, Betty Porter, Duncan Whitney, Jon Peterson, Darrin Ebbert, Brian Stanfill.

The first order of business: Mr. Jackson moved to have minutes approved from last meeting held December 21st.

Vote on motion: All present voted, Aye.

Mr. Ebbert distributed local government handbooks to RC members and explained in greater detail the procedure he intended to use to make appointments and schedule inventories of the various departments.

Mr. Ebbert also discussed the need for the transferral of the old court cases located in the Woodruff files to 1 cubic foot boxes in order to help preserve their longevity and to better prepare them for the move. Past president of ARMA's central Ohio chapter, Bob Allerding was contacted by Andrea Lentz about helping out in this capacity as well as conducting a general inventory of the Records Center. Mr. Allerding stated that he would be very glad to help.

Betty Porter stated that she needed further consultation on this matter with the Judge because it was ultimately the head of the department that is responsible for the records.

Mr. Ebbert also handed out information on the duties and responsibilities of the Records Commission and the County Microfilming Board. It was also suggested by Betty Porter that the two committees be combined and matters discussed concerning both during such meetings. The idea was well received, but nothing was formally decided.

Copies of plans and blueprints of the new Records Center were distributed by Mr. Ebbert and these plans were reviewed and explained by Mr. Ebbert and Mr. Stanfill.

No date was formally set for the next meeting, but it was concluded that it should be held after the completion of the inventory and before the move to the new Records Center.

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CHAPTER 91

COUNTY RECORDS COMMISSION

91.01 GENERAL INFORMATION

The number of records maintained by county government constantly increases. The proper retention, storage, transfer and disposal of records can make the job of county officials easier. In addition, transfer or disposal of outdated records can result in considerable savings of space and equipment.

Public records may be kept by any means of photostatic, photographic, film, or microfilm process or perforated tape, other magnetic means, electronic data processing, machine readable means, graphic or video display or any combination of the above which the official authorized to maintain the records deems necessary or advisable. However, when these methods are utilized, any machines and equipment necessary to reproduce the records in a readable form must be made readily available.(1) When any of these recording methods have been employed, the originals are to be disposed of in accordance with the procedures of the county records commission.

Establishing a comprehensive county records program involves a cooperative effort between the Ohio Historical Society (OHS), the Ohio Network of American History Research Centers (ONAHRC) and county offices. Assistance is available from local records specialists of the Ohio Historical Society who will assist counties with the inventory, analysis, transfer, destruction and retention of county records. Before any action to destroy or transfer county records can be taken, such action must be approved by the county records commission. For further information refer to OHIO COUNTY RECORDS MANUAL, 1983 and the LOCAL GOVERNMENT RECORDS HANDBOOK, 1985, both published by the Ohio Historical Society. This is a most useful manual as it makes recommendations concerning periods of retention for various records.

91.02 ACCESS TO PUBLIC RECORDS

Those records that are governed by the law include any document, device, or item created, received or coming under the jurisdiction of any county office which serves to document the organization, functions, policies, decisions, procedures, operations or other activities of the office.

Section 149.43 of the Revised Code is the basic Ohio public records law. It was enacted in 1963. Its purpose was to codify a broad and historic common law right to inspect governmental records. Under this 1963 law, the following types of records were exempted from the definition:

1. Physical or psychiatric exams,
2. Adoption, parole, and probation proceedings records, and
3. Records where the release was prohibited by state or federal law.

Thus, under Ohio law, any limitation upon the disclosure of information was a matter of either a specific statutory provision or as a result of case law.

In 1977 this long standing framework for determining the status of governmental records was disrupted by the enactment of Ohio's privacy act, Chapter 1347 of the Revised Code. The purpose of this law was to regulate the use of personal information and to protect the privacy of individuals from excessive record keeping by government. The effect of this law appeared to be to limit access to governmental records to a much greater extent than had been true under common law or Section 149.43 of the Revised Code. Chapter 1347 did not expressly mention the public records law and considerable confusion existed over reconciling the two laws. In the end, the controversy between personal privacy and public access was resolved in favor of public access.

In 1985 Section 149.43 was again amended and Section 149.40 was enacted to change the public records law. Because this is a relatively new law and was enacted as a part of the state budget bill, Am Sub HB 238, effective July 1, 1985, the legislative intent of these changes is not well known. The basic change in the law was to remove from Section 149.43 of the Revised Code the former limitation that a public record was one that was "required to be kept." At the same time Section 149.40 was enacted that limited the maintenance of records by public offices to those that are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency, and for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities.

The key difference between the former law and the current law is as follows: the former law defined any document in a county's possession as a record, but defined a public record as a record that was "required to be kept" by the county. The law only required the county to give the public access to records which were "required to be kept", but appeared to allow counties to keep records which were not "required to be kept" and were thus not required to be disclosed. With the 1985 changes in Sections 143.40 and 143.43 of the Revised Code, county officials are required to see that only records necessary to carry out the required functions of county government are kept and that any such records are public records unless specifically exempted by Section 149.43 of the Revised Code.

Present law now defines a public record as any record that is kept by a public office with the following exceptions:

1. Medical records,
2. Adoption, probation, and parole records,
3. Trial preparation records,
4. Confidential law enforcement investigatory records, and
5. Records whose release is prohibited by state or federal law.

Again it must be stressed that the records maintenance limitations imposed by Section 149.40 of the Revised Code, as described above, place limitations upon what records can be maintained by a public office.

Public records must be promptly prepared and be made available for public inspection at all reasonable times during regular business hours.(2) Upon request, copies must be made available at cost within a reasonable time.

For a better understanding of the relationship of the public records law and the privacy act, refer to Ohio Attorney General's Opinion 80-096, and Chapter 94 of this Handbook, "Ohio's Privacy Act." The following issues attempt to summarize important principles surrounding the two laws:

1. The privacy act does not restrict access to public records as defined in Section 149.43 of the Revised Code.
2. Ohio law formally recognizes the existence of three separate classes of governmental records. One class, which is comprised of records pertaining to confidential law enforcement investigations, trial preparations, and adoptions, may be disclosed neither to the public at large nor to the person who is the subject matter of the information, except that adoption records may be disclosed with consent of the court. The second class, which is comprised of records otherwise made confidential by law and subject to the provisions of Chapter 1347 of the Revised Code, may not be disclosed to the public at large, but must, upon request, be disclosed to the person who is the subject of the information. The third class, which is comprised of records that are public, must, upon request, be disclosed to any member of the public for any reason.

A governmental agency which is subject to the provisions of the privacy act, may collect, maintain and use personal information that is subject to the law only if such information is "necessary" to the functions of the agency.

An assertion by a governmental agency which is subject to the provisions of the privacy act that records maintained are not necessary and, therefore, are not public records, may be construed as an implicit admission that the agency has violated the privacy act, and Section 143.40 of the Revised Code.

91.03 MEMBERS OF COUNTY RECORDS COMMISSION

Each county has a county records commission composed of the following(3):

1. President of the Board of County Commissioners,
2. Prosecuting Attorney,
3. County Auditor,
4. County Recorder, and
5. Clerk of Courts.

The president of the Board of County Commissioners serves as the chairman of the county records commission.

Counties should note that the former requirement of law that once records have been approved for disposal, a list be published in a newspaper, has been deleted from the law.(5)

91.06 TRANSFER OF RECORDS

The execution of a written agreement is necessary to transfer records, and they may only be transferred to organizations capable of meeting accepted archival standards for the housing and use of the documents.

Some records may be transferred to a regional records center that serves all counties in Ohio. If they are transferred to one of the seven members of the Ohio Networks of the American History Research Center locations, the county records will be arranged by county office and will be available to all persons on the same basis as before transfer to the center. Following are the seven centers that serve Ohio:

1. University of Akron
2. Bowling Green State University
3. University of Cincinnati
4. Ohio University
5. Wright State University
6. Ohio Historical Society (Columbus)
7. Western Reserve Historical Society (Cleveland)

91.07 UNAUTHORIZED DISPOSITION OF RECORDS

No records may be removed, transferred, mutilated, destroyed, damaged, or otherwise disposed of without following the procedures set out in the records commission law. Such records must be delivered by outgoing officials and employees to their successors. Any person who is aggrieved as a result of a violation of Section 149.35 or 149.43 of the Revised Code may bring civil action to compel compliance with the law, and may recover a forfeiture of \$1,000 plus reasonable attorney fees. The Attorney General may also bring legal action to require the return of any public record which has been unlawfully transferred or removed. Such public records are to be returned to the office of origin and safeguards are to be established to prevent a recurrence.

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- (1) Ohio Revised Code 9.01
 - (2) Ohio Revised Code 149.43, as amended by Am Sub HB 238, effective 7-1-85.
 - (3) Ohio Revised Code 149.38
 - (4) Ohio Revised Code 149.38, as amended by Am Sub HB 238, effective 7-1-85.
 - (5) Ohio Revised Code 149.38, as amended by HB 466, effective 8-8-80.

CHAPTER 93

COUNTY MICROFILMING BOARD

93.01 INTRODUCTION

As Ohio's county offices are confronted with an ever increasing amount of paper work and a corresponding decrease in the availability of office and storage space, microfilm can offer a practical solution to records storage problems. During 1978 legislation creating Sections 307.80 to 307.806 of the Revised Code was enacted to permit the Board of County Commissioners to establish a county microfilming board. Section 9.01 of the Ohio Revised Code presently allows any county agency that is required by law to record, maintain, or file documents to use the microfilming process to preserve or protect records or to reduce storage space. This section also permits such agencies to purchase or rent equipment to make the microfilms or to contract with private concerns or other governmental agencies to develop and make copies.

93.02 ESTABLISHMENT AND MEMBERS OF THE BOARD

Any county may establish a county microfilming board with the adoption of a resolution. The members of the county microfilming board consist of the following officials:

1. County Treasurer,
2. County Auditor,
3. Clerk of Courts,
4. A member of the Board of County Commissioners chosen by the Board,
and
5. County Recorder.

Each member is authorized to designate a representative to serve in his place on the board. The County Recorder or his representative serves as the secretary of the county microfilming board. The County Recorder will also serve as the microfilming board's chief administrator and he can employ a deputy.

93.03 MEETINGS OF MICROFILMING BOARD

Once the county microfilming board is established, the board is required to hold its first meeting within 90 days. The regular annual meeting of the board occurs on the third Monday of January. Other meetings are held at times determined by the County Recorder. In addition, any other member of the board may request a meeting (in writing) and upon receiving such a request the County Recorder must convene such a meeting within five days.

93.04 POWERS AND DUTIES OF COUNTY MICROFILMING BOARD

After the initial meeting of the Board, no county office can purchase, lease, operate, or contract for the use of any microfilming equipment without prior approval of the county microfilming board. This applies to most county offices except for a county hospital when the hospital uses microfilming equipment to record or store physical and psychiatric examinations or treatment records of its patients. The county hospital would, however, be required to participate in purchasing film and equipment and in entering into microfilming service contracts when the county microfilming board requests this participation. It also seems probable that the county school board(1) and Court of Common Pleas or Court of Appeals(2) is exempt from this provision. In addition, the county microfilming board has the following powers and duties:

1. To coordinate the use of all microfilming equipment in use throughout the county.
2. To authorize any county office to contract for microfilming services or to operate or acquire microfilming equipment, when it is determined that such action is desirable.
3. To establish a county microfilming center which will provide for a centralized system for the use of microfilming by all county offices.
4. To enter into contracts with other local units of government, the state, federal agencies and a variety of special districts, to provide microfilming services.
5. Establish a schedule of charges to provide microfilming services.
6. To adopt rules and regulations necessary for the operation of the board. They must be adopted by unanimous vote.

93.05 RESPONSIBILITIES OF THE COUNTY RECORDER

The County Recorder serving as the secretary of the county microfilming board and as the board's administrator has the following major responsibilities:

1. To supervise the operation of the county microfilming center.
2. To employ other persons to operate the county microfilming center, subject to the approval of the county microfilming board.
3. To fix the compensation of the deputy and all employees of the county microfilming center. Salaries and expenses are paid from monies appropriated by the Board of County Commissioners to the county microfilming board.
4. To adopt such rules as are necessary for the operation of the county microfilming center.

5. To submit an annual budget request to the Board of County Commissioners for the microfilming center as provided for in Section 5705.28 of the Revised Code.

93.06 ANNUAL REPORT OF COUNTY MICROFILMING CENTER

The County Recorder is required to file with the county microfilming board and with the Board of County Commissioners a report of the operations of the microfilming center and a statement of receipts and expenditures for the year. This annual report must be filed on the first Monday of April of each year.

93.07 ABOLISHMENT OF MICROFILMING BOARD

It appears that the Board of County Commissioners also has authority to abolish the microfilming board by the adoption of such a resolution. If the board is abolished, however, they may then be without authority to provide microfilming services to other agencies. Refer to Section 92.08 of the Handbook for additional information.

93.08 REASONS FOR ESTABLISHING A MICROFILMING PROGRAM

Records are microfilmed for two reasons:

1. To provide security for those records which contain vital information, the loss of which would cause disruption in the business of county government.
2. To be used as the record copy instead of the paper copy (see Section 9.01 of the Revised Code.).

The first method is not intended to save money and is done as an insurance policy against the loss or damage of records of enduring legal and/or historical value. Vital records protection should be the first objective of any microfilm program as the loss of legal rights and our heritage can not be recovered in monetary terms. The second storage method can be a money saver if approached with careful planning. Since storage space in most counties is at a premium, most older records are going to have to be converted to film unless new storage space can be secured. If a vital records microfilm program has been established, many older records will have been filmed and can be retired to inactive storage centers, archival repositories, or destroyed. Thus the microfilm can be used as the copy of record in those offices that now have more space available for current needs.

93.081 ADVANTAGES OF MICROFILM

As with anything, there are pluses and minuses also with microfilm. The positive aspects of microfilm are:

1. Vital records filmed and stored properly provide more than adequate security against loss, damage, or theft. In fact master negative microfilm stored under archival conditions can last up to 500 years.

2. With the costs of storage, office equipment, and labor rising each year, judicious use of film to reduce hard paper copy can result in cost savings in the areas mentioned above and can more than cover the long term costs of the microfilm and equipment.
3. Widespread use can be made of records on film since many copies can be made a low cost from the master negative. These copies can then be provided to researchers, libraries, and historical societies across the state and nation.

93.082 DISADVANTAGES OF MICROFILM

Disadvantages of microfilm include the high initial cost for equipment and services. Any government agency using microfilm as its official record must have a reader-printer to make copies of the record (see Section 9.01 and 149.43 R.C.). However, careful shopping and buying equipment that is simple in design and operation can reduce these costs. Another problem is that, at times, it is necessary to send the original record to be processed and filmed thus leaving the office without the record for a short time and could cause a temporary disruption of services. Establishing a microfilm program can be a valuable asset to any county in terms of providing security and helping to reduce operating costs by saving equipment, space, and time. It can also make access to the public record easier. However, the cost of establishing a microfilm program is initially high but managed effectively and used wisely can increase efficiency and reduce overall operating costs of the county. The Ohio Historical Society, through its Local Records Program, can offer advice to counties on the purchase of equipment, supplies, and services and can help set up an effective centralized microfilming operation for the county.

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- (1) Ohio Attorney General Opinion No. 68-105
 - (2) Ohio Attorney General Opinion No. 71-085