

OPINION
51-37

June 14, 1951 (OPINION)

COUNTIES

RE: Microfilming of County Records

You have requested the opinion of this office as to the legality of the recording of various county instruments through the microfilming procedure, and the subsequent destruction of the records now kept.

In some instances our laws may provide that the county official must keep the original document for recording purposes. In those cases, of course, where the law is mandatory, it is clear that the original of the document must be kept for the required number of years before it can be destroyed.

However, in some cases, only a true copy of the original document is kept for recording purposes. This opinion is concerned with that type of record.

Whatever the method used for recording, it is a record of the things recorded as it is a true and correct copy. The object of recording is to give perpetuity and publicity, and the two main requirements of public records are that they shall be accurate and durable. As civilization has progressed, so has the method of recording instruments changed. Charcoal drawings on the walls of caves gave way to carvings on the face of cliffs, and these in turn were supplanted by handwriting on parchment. Commercial necessity required the substitution of paper for parchment, and handwriting gave way to the faster and more clear typewriting.

It is generally accepted that photograph is a much more accurate process of making a copy of an instrument than any other known method. It will show the instrument exactly as it is. The requirement of accuracy is fully complied with by this method. It is also true that prints properly made are as permanent as the paper on which they are made, and so the requirement of permanency is met.

The county auditor is a county officer named in Section 173 of the Constitution. Every such officer should exercise an intelligent discretion in the performance of his official duties. Where the law does not require him to keep the original document, but to record certain instruments, he has performed his duty as long as the method adopted by him is accurate and durable.

There being nothing in the law forbidding the recording of instruments by the photographic process, we hold that the county auditor would not abuse the discretion, with which he is clothed, in recording the required documents by the microfilming method. Upon the completion of the microfilming procedure, an accurate record would, of course, be in existence, and the prior record could be destroyed.

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