

Opinion No. 55-6113

February 24, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. E. B. Swope, Warden, New Mexico State Penitentiary, Santa Fe, New Mexico

Your Chief Clerk, L. L. Chavez, has requested an opinion regarding disposition of the following old records of inmates:

1. Commitment and the allied papers, i.e., judges and sheriff's reports.
2. Description sheets including photographs, finger prints and negatives.
3. Correspondance, F.B.I. and classification records.
4. Loose leaf summary book records.
5. Miscellaneous papers and memorandums.
6. Parole reports and other allied papers pertaining to parole.

In 1947 the Legislature passed Chapter 185 known as an act for the microfilming of public records, the preserving of said microfilm copies and the subsequent destruction of the original records. The act is found in §§ 71-4-6, 71-4-7, 71-4-8, and 71-4-9, N.M.S.A., 1953 Compilation.

The first section defines a public officer. The second section provides that any public officer may cause any and all records, papers or documents kept by him to be photographed or microfilmed and any device used to reproduce same shall be accurate in all details.

Section 71-4-8 makes such photographs of such records or the microfilms, an original record for purpose of introducing such in evidence.

Section 71-4-9 provides that original records, which have been so microfilmed; may be destroyed with the approval of the State Comptroller, but requires that two reproductions be made, one to be kept at the place at which the original record was maintained, the other to be forwarded to the archives of the Secretary of State.

There is a further restriction imposed which demands that no original record may be destroyed, after copies have been made, until such record has been a public record for five years, or until the record has been audited by the office of the State Comptroller.

It is evident from this statute that the Legislature intended it to apply to public records, intended to provide for a means of more compact storage and preservation of such records, and to insure their permanent availability through the office of the Secretary of State.

In view of the language of the above numbered sections of the New Mexico Statutes Annotated, 1953 Compilation, and our interpretation of same, it is the opinion of this office that since the Penitentiary Warden is an appointed public officer, he can microfilm all records, papers and documents mentioned in letter dated February 18, 1955 to this office, and destroy the original records after obtaining approval from the State Comptroller, after he has made two reproductions of all original records, papers or documents, keeping one copy where original record was kept and the other copy being sent to the Secretary of State for her archives. It is provided further that no original records, papers or documents be destroyed, after copies have been made, until such records, papers or documents have been a public record for five years, or until the records have been audited by the office of the State Comptroller.

There is nothing to prevent transferring and storing obsolete records in order to provide additional space.

I trust this fully answers your inquiry.

By: Hilario Rubio

Assistant Attorney General