

## Opinion No. 60-68

April 12, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Joseph F. Halpin, Administrator State Records Center Santa Fe, New Mexico

### QUESTION

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When state public records have been microfilmed pursuant to Section 15 of the Public Records Act (§ 71-6-1 et seq., N.M.S.A., 1953 Comp., 1959 Supp.), may the paper originals be destroyed by the State Records Administrator without action by the State Commission of Public Records?

#### CONCLUSION

No.

### OPINION

#### {\*425} ANALYSIS

The State Commission of Public Records was created and the duties and powers of the State Records Administrator were prescribed by the Public Records Act, §§ 71-6-1 to 71-6-17, N.M.S.A., 1953 Comp., 1959 Supp. The Administrator has no powers other than those granted by that Act. A fair reading of the subject statute leads one to the conclusion that destruction by the Administrator of original public records, after making microfilmed copies, was not contemplated and is not permitted.

Several portions of the Act are pertinent to the decision of this controversy and should be quoted here. Section 71-6-2 defines terms used and provides in part:

"C. 'Public records' means all books, papers, maps, photographs or other documentary materials, regardless of physical {\*426} form or characteristics, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein. Library or museum material made or acquired solely for reference, circulation or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included; . . ."

Section 71-6-15 provides in part:

"Any public officer of the state or any county, municipality, district or political subdivision may cause any or all records, papers or documents kept by him to be photographed, microphotographed or reproduced on film . . . Such photographs, microphotographs or photographic film shall be deemed to be original records for all purposes, including introduction in evidence in all courts and administrative agencies."

It is clear from reading the above quoted portions of the Public Records Act that "public records," as defined therein, may be reproduced by microphotography. However, there is no implication that the paper originals can then be destroyed by the Administrator. In fact, after declaring that proper reproductions "shall be deemed to be originals for all purposes," § 71-6-15 further provides as follows:

"Whenever such photographs, microphotographs or reproductions on film properly certified are placed in convenient accessible files and provisions 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 9, 10 and 11 (71-6-9 to 71-6-11) of the Public Records Act.**" (Emphasis added).

In view of the clear meaning of the above quoted language, it is our conclusion that destruction of such documents can be accomplished only as provided in §§ 71-6-9 to 71-6-11 which require, among other things, an appropriate order by the Commission.

By: F. Harlan Flint

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