

**Opinion No. 28.****Secretary of State—Duties—Constitution—Statutes—Records—Proper Books—Microfilm.**

HELD: The Secretary of State complies with the constitutional and statutory requirements of keeping records in "proper books" by the use of microfilm.

June 17, 1953.

Mr. Sam W. Mitchell  
Secretary of State  
Capitol Building  
Helena, Montana

Dear Mr. Mitchell:

Your letter of April 8, 1953, refers me to Section 82-2202, R. C. M. 1947, and more specifically to subsections 4, 5, and 16 thereof as herein set out:

"82-2202. Duties of Secretary of State. In addition to the duties prescribed by the Constitution, it is the duty of the Secretary of State: . . .

"4. To record in proper books all conveyances made to the state, and all articles of incorporation filed in his office.

"5. To receive and record in proper books the official bonds of all the state officers, and then deliver the originals to the state treasurer.

"16. To receive, designate, and record trade-marks as provided in Section 85-102."

You make further reference to Chapters 189 and 100, Laws of 1953. The legislature, by enacting Chapter 100, has provided an additional rule of evidence by stating that microfilm records of all documents of whatever nature, private or public, shall not only be admissible evidence but also competent evidence when satisfactorily identified. The legislature further states that the same weight must be given to these records as to the original documents. With the passage of Chapter 189, the legislature has indicated an awareness to the practicality of the use of microfilm for retaining records. According to the provisions of that chapter, all

the records of the various state departments which are ten years old or older, upon the approval of the State Records Committee, must be microfilmed and retained. The originals are then to be destroyed. You ask the question:

"Whether recording the documents referred to in the above sections may be legally accomplished by recording on microfilm?"

The question evolves itself as this:

"In view of the microfilm statutes, is recording by microfilm recording in 'proper books,' as required by the pertinent subsections of Section 82-2202, R. C. M., 1947?"

The executive department for governing the State of Montana is provided for in Article VII, Section 1 of the Constitution of the State of Montana, and the duties of keeping the public records, books and papers are therein prescribed. Further, this section states that:

"The officers of the executive department . . . shall perform such duties as are prescribed in this Constitution and by the laws of the state."

The Secretary of State was made an officer of the executive department by this section of the Constitution.

Title 82, Chapter 22, R. C. M., 1947, sets out more specifically the various duties of the Secretary of State. Included therein are those enumerated above. The legislature has, at no time, attempted to define the term "proper books." Consequently, the Secretary of State, in the intelligent exercise of his discretion in the performance of his duties, determines what are "proper books" and establishes the recording methods in his office. The two main requirements of a public record are that it be accurate and durable. *People v. Haas*, 142 N. E. 549, 550, 331 Ill. 164.

A record is maintained ". . . not only to give an instrument perpetuity but also publicity or notice . . ." *People v. Haas*, supra. A record as such satisfies the statutory requirements. It is certain that the legislature in 1895 stated that the records should be kept

in "proper books," and it is equally certain that the legislature at that time did not contemplate microfilm. However, microfilm was not known at that time, and the statutes did not and do not prohibit a more efficient and inexpensive recording. *People v. Haas*, *supra*.

That the microfilm records are not kept in bound volumes but are kept in certain types of containers and certain types of cabinets in no way departs from the fact that the subject matter contained therein represents a book or books. *People v. Haas*, *supra*, *Bennington B. Booth*, 140 Atl. 157, 101 Vt. 24, U. S. v. *One Obscene Book Entitled: "Married Love."* D. C. New York, 48 F (2d) 821, 823.

It is the duty of the Secretary of State and other record keeping officers in the evolution of record keeping to use the methods most satisfactory to the state in regards to the expense involved and the utility of available space. That is, undoubtedly, the legislative desire, as long as the record is a true and correct copy and is available for posterity. The law sets forth no method; consequently, as long as the method used is accurate and durable, the officer has done his duty.

It is therefore my opinion that the Secretary of State, with the use of microfilm, will have complied with the constitutional and statutory requirements of keeping records in proper books.