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ARIZONA ATTORNEY GENERAL

Opinion No. 64-40-L
R-162
October 14, 1964

REQUESTED BY: IVAN GREEN, Chief Examiner
Highway Department Motor Vehicle Division

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTIONS: 1. How long must records in the Driver
Improvement Section of the Driver's
License Department be retained before
destruction?

2. Can such records be retained on
microfilm?

ANSWERS: 1. See body of opinion.
2. See body of opinion.

(1) The Arizona Revised Statutes clearly
state the method and procedure to be used in determining
whether documents or public records are to be de-
stroyed or retained.

A.R.S. § 41-721(A) as amended, states that:

"The board of history and archives shall
be composed of the director of the de-
partment of library and archives, the
attorney general, the post auditor and
when the public records of a city,
county or other political subdivision
of the state other than a state depart-
ment is involved, the state examiner.
The director of the department of
library and archives shall be chairman
of the board."

A.R.S. § 41-721(B) as amended, states:

"Whenever a public officer has public
records in his custody which may be of
legal, administrative, historical or
other value, and determination of such
value is to be made by the board, the

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public officer having custody of the records shall become a member of the board solely for the purpose of making such determination. If the public records are in the custody of the director of the department of library and archives, the attorney general, the post auditor or the state examiner, the board of history and archives shall consist of the members appointed by this section. Added Laws 1958, Ch. 98."

As to the powers of the board, A.R.S. § 41-722 as amended, states:

"The board of history and archives may:

"1. Determine whether public records presented to it are of legal, administrative, historical or other value.

2. Dispose of records determined to be of no legal, administrative, historical or other value, provided the determination meets the approval of a majority of the members of the board of history and archives.

3. Accept those records deemed by a public officer having custody thereof to be unnecessary for the transaction of the business of his office, and deemed by the board of history and archives to be of legal, administrative, historical or other value.

4. Check public records of any public office which terminates its functions and existence.

5. When it fails to agree as to the legal, administrative, historical or other value of public records, request the governor to make a determination as to whether the records shall be disposed of in the interest of conservation of space, economy or safety. Added Laws 1958, Ch. 98, § 1."

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As to the question of whether the records in question fall into the definition of records under this statute, § 41-723 states in part:

"'Records' means all books, papers, maps, photographs, or other documentary materials, regardless of physical 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 appropriated 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 information and historical value of data contained therein...."

It appears, therefore, that the board may approve the destruction of the records in the Driver Improvement Section of the Driver's License Division if the board determines them to be of no administrative, legal, historical or other value.

(2) A.R.S. § 12-2262(D) provides:

"A reproduction, made by any photographic, photostatic, microphotographic, or similar process, of any record which would constitute competent evidence under subsections A, B, or C, shall have, whether or not the original has been destroyed, the same force and effect as the original, and shall be admitted in evidence in all courts, quasi-judicial commissions and administrative agencies in the state. All circumstances surrounding the making of such reproduction when offered in evidence may be shown to affect the weight, but not the admissibility thereof. Any device used

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to make a reproduction shall be one which correctly and accurately reproduces the original thereof in all details, but reproduction of color and size shall not be required. A reproduction may be offered in evidence through the use of a projector."

From the foregoing, it appears that original documents are of no legal or administrative value once microfilmed copies are available for the department's use. The possible historical or other value of such applications appears non-existent. Therefore, no reason appears why the Board of History and Archives could not approve the disposal of original records immediately after microfilming.

Respectfully submitted,

Robert W. Pickrell
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The Attorney General

RWP:PCG:VBK:sls