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ARIZONA ATTORNEY GENERAL

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STATE CAPITOL
PHOENIX, ARIZONA

February 18, 1969

DEPARTMENT OF LAW OPINION NO. 69-5-L (R-59)

REQUESTED BY: MARGUERITE B. COOLEY, Director
Department of Library and Archives

QUESTION: May the destruction of public records
be authorized by agencies other than
the Board of History and Archives?

ANSWER: No.

When the legislature enacted Chapter 55, Laws of 1964,
it included a statement of its intention in Section 1, which
reads:

"The legislature declares that records containing
information essential to the operation of govern-
ment and to the protection of rights and interests
of persons must be protected against destructive
effects of all forms of disaster and must be
available when needed. It further declares that a
program for the efficient and economical management
of state and local records will promote economy and
efficiency in the day-to-day record keeping activities.
It is necessary, therefore, to adopt special provisions
for the selection and preservation of essential state
and local records, thereby providing for the protection
and availability of such information."

All of the subsequent sections must be read in the light
of Section 1. A.R.S. § 41-729.03 establishes broad powers and
duties of the Director, who is charged with administering this
law. Subsection B deals with the responsibilities of the head
of each "agency," which is defined at A.R.S. § 41-729.01(1) as
a part of the executive branch of government, therefore state
agencies. Subsection C of A.R.S. § 41-729.03, deals with each
county, city or town, or other subdivision and provides:

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"C. The governing body of each county, city, town, or other political subdivision, shall promote the principles of efficient record management for local records. Such governing body shall, as far as practical, follow the program established for the management of state records. The director shall, upon request of the governing body, provide advice and assistance in the establishment of a local records management program."

The weak language is apparent when compared to the foregoing subsection, which, we think, creates an ambiguity in the law when viewed from Section 1, and the purpose of the law as set forth in A.R.S. § 41-729.04:

"A. All records made or received by or under authority of or coming into the custody, control or possession of public officials of this state in the course of their public duties are the property of the state and shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law.

B. No record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the director that the record has no further administrative, legal, fiscal, research or historical value."

Was the purpose of the Act to exclude counties, cities, towns and other subdivisions from its purview? Clearly not. Subsection C and Section 1 are contrary to such a conclusion. It is also clear from reading Section 1 and § 41-729.04 that the legislature intended a strong vigorous policy against the destruction of public records at all levels of state and local government. It is necessary then to relate the weak subsection C to the strong section 1 and § 41-729.04.

It is, therefore, our opinion that A.R.S. § 41-729.04(B)

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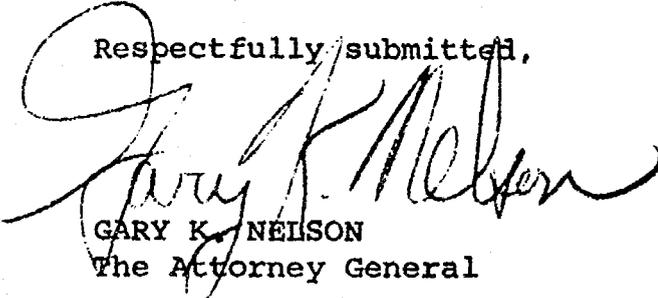
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governs all levels of state and local government and that no public records in their possession may be destroyed unless it is determined by the Director of the Department of Library and Archives that it has no further administrative, legal, fiscal, research or historical value.

Respectfully submitted,



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The Attorney General

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