

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

July 1, 2013

Opinion No. 13-48

County Public Records Commission

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**QUESTIONS**

1. Are records in a county mayor's office within the jurisdiction of a county public records commission?
2. Does a county office have the authority to destroy public records without the authorization of the county public records commission?
3. What, if any, are the penalties for the destruction of public records without authorization from the county public records commission?

**OPINIONS**

1. Yes.
2. A county office has the authority to destroy public records without authorization of the county public records commission if the county office is so authorized by law, pursuant to Tenn. Code Ann. § 10-7-404(d)(1). A county office also has the authority to destroy original public records which have been reproduced in accordance with any regulations promulgated by the Secretary of State within the guidelines and time frames established by Tenn. Code Ann. § 10-7-404(d)(2).
3. The Tennessee statutes creating county public records commissions, codified at Tenn. Code Ann. §§ 10-7-401 to -412, do not establish any penalties for the destruction of public records without authorization from the county public records commission. This Office is unaware of any other Tennessee law establishing such penalties.

**ANALYSIS**

1. Each county legislative body is required to create a county public records commission "[i]n order to provide for the orderly disposition of public records created by agencies of county government." Tenn. Code Ann. § 10-7-401. *See* Tenn. Att'y Gen. Op. 95-001 at 2 (Jan. 6, 1995). *See also* 1999 Tennessee Archives Management Advisory, *located at* <http://www.tennessee.gov/tsla/aps/tama/tama14pubrecscommissions.pdf>.

“Public records” within the county are defined as:

- (1) All documents, papers, records, books, and books of account in all county offices, including, but not limited to, the county clerk, the county register, the county trustee, the sheriff, the county assessor, *the county mayor* and county commissioners, if any;
- (2) The pleadings, documents and other papers filed with the clerks of all courts, including the courts of record, general sessions courts and former courts of justices of the peace, and the minute books and other records of these courts; and
- (3) The minutes and records of the county legislative body.

Tenn. Code Ann. § 10-7-403 (emphasis added).

The definition of “public records” specifically includes all documents, papers, records, and books in the office of the county mayor. Accordingly, the destruction of records in the county mayor’s office is within the jurisdiction of the county public records commission.

2. The destruction of county public records is primarily governed by Tenn. Code Ann. §§ 10-7-404 and -406. The county public records commission is granted the authority, with certain exceptions, “to authorize the destruction of any and all public records as defined in § 10-7-403, *which are required by law to be retained*, when such records have been photocopied, photostated, filmed, microfilmed, or preserved by microphotographic process.” Tenn. Code Ann. § 10-7-404(a) (emphasis added). This statute specifically states as follows:

The county public records commission has the right to authorize the destruction of any and all public records as defined in § 10-7-403, which are required by law to be retained, when such records have been photocopied, photostated, filmed, microfilmed, or preserved by microphotographic process, as hereinafter provided; provided, that no record required by law to be permanently retained shall be destroyed without a majority vote of the commission. A county officer or judge of a court of record shall be entitled to prevent the destruction of documents, minutes, or records in the office or court, as appropriate. The requirement to photocopy, photostat, film, microfilm, or preserve by microphotographic process prior to destruction in accordance with this section shall not be required of “temporary records” and/or “working papers” as defined in § 10-7-301. The commission does not have the authority to authorize the destruction of any financial or other record which is determined by the comptroller of the treasury to be required for audit purposes until the pertinent audit has been completed. After the audit, disposition will be determined pursuant to procedures developed by the comptroller of the treasury; provided, that the commission shall not have the authority to authorize the destruction of any other record which is otherwise required by law to be retained.

Thus, in most cases if a public record is required to be retained by law and the record has been copied or preserved by microphotographic process, then only the county public records commission may authorize the destruction of the record. *Id.*

The county public records commission also may, upon the request of any office or department head of county government having custody of public records, “authorize the destruction or transfer of original public records which have been reproduced onto computer or removable computer storage media” in accordance with standards and procedures established by the Secretary of State, provided that the commission has complied with Tenn. Code Ann. §§ 10-7-413 and 10-7-414. Tenn. Code Ann. § 10-7-404(d)(1). However, this statute recognizes that “[t]he authority to destroy original public records granted by this subsection (d) is not exclusive and shall not prevent the destruction of original public records where otherwise authorized.”

The county public records commission is specifically given the authority to promulgate rules and regulations providing for, among other things, procedures for “compiling and submitting to all county offices lists, schedules or time tables for disposition of particular records within the county” and “procedures for the physical destruction or other disposition of public records.” Tenn. Code Ann. § 10-7-411.

Additionally, a county officer or department head is authorized to destroy original public records which have been reproduced in accordance with any regulations promulgated by the Secretary of State in accordance with the following procedure:

If the county public records commission fails to act upon a request of a county officer or department head having custody of public records to order the destruction or transfer of original public records after the same have been reproduced in accordance with this subsection (d) within six (6) months of receiving such a request in writing, then the county officer or department head may forward the request to the state library and archives, whereupon the state librarian and archivist, or designated representative, shall have authority to authorize the destruction or transfer of the public records instead of the county public records commission. Failure of the state library and archives to respond to the records disposal request of the county officer or department head within nine (9) months of receiving such a request shall authorize the county officer or department head to destroy the original public records which have been reproduced in accordance with any regulations on this subject promulgated by the secretary of state.

Tenn. Code Ann. § 10-7-404(d)(2).

Finally, any record defined as a “temporary record” and/or “working papers” as set forth in § 10-7-503 may be destroyed in accordance with the rules and regulations adopted by the commission without retaining the originals of such records. Tenn. Code Ann. § 10-7-406(b).

3. The Tennessee statutes creating county public records commissions codified at Tenn. Code Ann. §§ 10-7-401 to -412, do not provide for the assessment of any penalties for the

destruction of public records without authorization from the county public records commission. This Office is unaware of any other Tennessee law establishing such penalties.

ROBERT E. COOPER, JR.  
Attorney General and Reporter

WILLIAM E. YOUNG  
Solicitor General

JANET M. KLEINFELTER  
Deputy Attorney General

Requested by:

The Honorable Kent Williams  
State Representative  
Suite G-2 War Memorial Building  
Nashville, Tennessee 37243