



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

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ATTORNEY GENERAL

July 26, 1976

The Honorable E. L. Short  
Chairman  
Committee on Intergovernmental  
Affairs  
House of Representatives  
Austin, Texas 78701

Opinion No. H- 852

Re: Length of time required  
before an incorporated city  
may destroy the original  
paper public record after  
it has been microfilmed.

Dear Mr. Short:

You ask when original paper public documents may be destroyed by a city after being microfilmed. In addition, you ask when the microfilm records may be destroyed.

From 1947 to 1971, the authority of political subdivisions, including cities, to duplicate and dispose of original records generally was regulated by article 6574b, V.T.C.S., which specifically provided that:

Whenever photographic duplicates of public records are so made . . . the original records may be . . . destroyed or otherwise disposed of, provided, however, that no original record shall be destroyed or otherwise disposed of unless or until the time for filing legal proceedings based on such record shall have elapsed, and, in no event, shall any original public record be destroyed or otherwise disposed of until said public record is at least five (5) years old . . . . (Emphasis added).  
Sec. 4.

In 1971, article 1941(a), V.T.C.S., was enacted for counties, repealing article 6574b insofar as in conflict, and providing that counties could dispose of original records only after the microfilm copy had been used for five years.

In 1975, article 6574c, V.T.C.S., was enacted for incorporated cities. It repealed article 6574b insofar as the two conflicted and provided, in section 3, that cities could enact ordinances for disposal of their records:

Original public records which are micro-filmed in compliance with an ordinance authorized by this Act may be destroyed after five years. Original public records which are not microfilmed in compliance with an ordinance authorized by this Act or are determined worthless by the governing body of an incorporated city may be destroyed as directed by the governing body. Notice of proposed destruction or disposition of original public records shall first be given to the State Librarian or State Archivist, and if such records are, in his opinion, needed for the State Library, the records shall be transferred thereto. (Emphasis added).

Since your question is directed only to those paper documents that are microfilmed, we do not address the question of a governing body's authority to destroy records that are not microfilmed. In our opinion, it is clear that public records which are microfilmed may be destroyed only "after five years."

However, you further question whether "after five years" in article 6574c means five years after the document came into existence (i.e., "five years old" as previously provided in article 6574b) or five years after the document is microfilmed (i.e., as provided for counties in article 1941(a)). Article 6574c is ambiguous in this regard, and it is appropriate in determining legislative intent to refer to other statutes, including repealed ones, relating to the same subject matter. Sutherland Statutory Construction, Chapter 51. In our opinion, the appropriate statute to be read in pari materia with article 6574c is its predecessor for

incorporated cities, article 6574b, which has been repealed only insofar as they conflict. See Attorney General Opinion H-523 (1975). Therefore, an ordinance passed under article 6574c may provide that, after microfilming, original paper documents are to be destroyed once they are at least five years old. The ordinance similarly may provide for the destruction of documents already five years old at the time of microfilming. In neither instance, however, may such destruction occur until after the State Librarian or State Archivist has had an opportunity to order the records transferred to the State Library as provided in article 6574c.

Your last question concerns when the microfilm record may be destroyed. In section 2 of article 6574c, such microfilm records are defined as "original public records." It is possible therefore to construe section 3 of the article to allow destruction of microfilm copies once they are five years old. In our opinion, such a result would be contrary to the apparent legislative intent evidenced elsewhere in the article, such as in section 1 of article 6574c, which requires that the microfilm process result in "permanent" copies. In addition, such a result would be contrary to past legislative policy in favor of maintaining public records, and to the historical purpose of microfilm copies as permitting a permanent retention of public documents with a minimum use of space. See e.g. V.T.C.S. arts. 1941a, 1899, 6574b; Attorney General Opinions WW-1456 (1962), WW-793 (1960) and V-1079 (1950). We believe the section 2 description of microfilm records as original public records was intended only for purposes of the use of such records in court as provided in section 2 of article 6574c and not for purposes of destruction as provided in section 3.

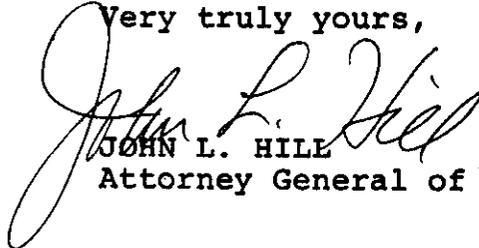
#### S U M M A R Y

A city ordinance passed pursuant to article 6574c, V.T.C.S., may provide that, after microfilming, original public records may be destroyed when they are at least five

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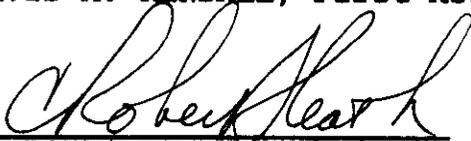
years old. Article 6574c does not provide for the destruction of the microfilm records after five years.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee

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