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UNIFORM STATE ARCHIVAL LEGISLATION¹

THE federal system of government determines the pattern of archival administration in the United States. Forty-eight states, acting as independent dictators concerned mainly with immediate problems and largely oblivious of each other's efforts, have exercised exclusive jurisdiction over state and local archives. A generation of uncorrelated, unsystematic experimentation has produced a wide diversity of legislation, administration and achievement. For years some states have been seeking legislation and administrative procedures which would safeguard the making, preservation and availability of public archives; others have scarcely come yet to serious grips with the problem.

State experimentation has brought universal recognition of the administrative and historical value of public archives and of the eligibility and importance of their administration as a function of state government. Moreover, it has analyzed, described and defined the complex problems of archival administration in the forty-eight states and has shown them to be less diverse than the practices and achievements. So similar are the problems that archivists of the various states long ago learned that they could learn from each other. From 1909 they assembled annually at the call of the Public Archives Commission of the American Historical Association to sit in study at each other's feet. An evolving consciousness of a national community of archival problems and interests, based on a growing realization of their similarity in the forty-eight states, produced the Society of American Archivists in 1936. The organization of the Society and the establishment of the National Archives signalized the nationalization as well as the professionalization of archival interest and effort in the United States.

State archival experience has also shown that certain administrative

¹ Presidential address read at the second annual meeting of the Society of American Archivists, Springfield, Illinois, October 25, 1938.

systems and procedures are more effective than others and that state legislation is of basic importance to the existence as well as the improvement of archival administration. To insure effectiveness, the system or form of administration should be supplemented by intelligent public opinion, a professional, nonpolitical personnel and an adequate operating budget. But some form or system is essential and must rest upon state legislation. State law, or the absence of it, determines in large degree the location, care and availability of state and local archives. It imperiously directs investigators to the places where their source materials may be found and determines in large measure the conditions attending them and their use of them. It is indispensable to, though not a guarantee of, effective archival administration.

If state legislation is basic to the progress of archival economy, if the archival problems of the forty-eight states are similar and if some states have been more successful than others in solving these problems, should there not be a conscious, concerted, nation-wide effort to profit by the experience of those states which have been most successful? Uniform or similar state archival legislation, based upon the most effective laws anywhere, would seem to be the most direct course to a general improvement in the administration of state and local archives.

The obstacles to the voluntary co-operation of forty-eight states in adopting uniform archival laws are very great. But powerful factors inspire optimism. Localism is giving ground before the advancing nationalization of social, economic, cultural and political life in the United States. More and more evident is the universality and similarity of state archival problems. The National Archives is a common source of stimulus, trained personnel and improved techniques. The archivists are now organized in a national society "to promote sound principles of archival economy and to facilitate co-operation among archivists and archival agencies." A primary objective of its standing Committee on Public Relations is the improvement of state archival legislation. The Society might endeavor to enlist the co-operation of the National Conference of Commissioners on Uniform State Laws, an influential organization affiliated with the American Bar Association, which has already secured uniform or similar state legislation on some subjects of nation-wide interest and importance. Moreover, in every state there is strong unorganized support among historians, economists, sociologists, lawyers, public officials and intelligent citizens for any reasonable archival program designed to promote public interest.

The time seems ripe for the Society of American Archivists to formulate the best existing archival legislation in the states and endeavor to mobilize all available support in obtaining uniform or similar laws in all of the states. Such an effort should be based upon an objective examination and a discriminating evaluation of existing state archival legislation² and experience.

² The following citations are to the state archival legislation upon which this address is based.

Alabama: *The Alabama Code of 1928*, secs. 1398-1417, 2683-2696, 3207, 4120-4124, 5017-5019, 5030, 5031, 6727, 7681-7687, 7709, 7719, 10128-10139. Arizona: *The Revised Code of Arizona*, 1928, secs. 102, 853, 862, 1933, 2750-2755, 4458, 4523, 4542; *Supplement to the Revised Code of Arizona, Annotated*, 1936, sec. 2755a; *Acts, Resolutions, and Memorials of . . . Arizona*, 1937, chap. 32. Arkansas: *A Digest of the Statutes of Arkansas . . .* 1937, secs. 2412-2414, 3547, 5130-5141, 5143, 10368, 10928-10957, 12236-12242.

California: *Deering's General Laws of the State of California* (1937), acts 1034, 3986, 6550; *Deering's Code of Civil Procedure of the State of California* (1937), secs. 1045, 1888, 1892, 1893, 1905, 1918, 1950; *Deering's Political Code of the State of California* (1937), secs. 382, 407, 408, 1032, 4041.24A, 4095A, 4130-4133, 4142, 4142b; *Deering's Penal Code of the State of California* (1937), secs. 76, 113, 114, 471, 473. Colorado: *1935 Colorado Statutes Annotated*, chap. 40, secs. 49-50; chap. 45, sec. 176; chap. 46, secs. 5-9; chap. 48, secs. 151, 155; chap. 135. Connecticut: *The General Statutes of Connecticut, Revision of 1930*, secs. 126, 323, 1057-1067, 2279, 5601-5607, 6172; *Cumulative Supplement to the General Statutes, Revision of 1930, State of Connecticut* (1935), secs. 33c, 40c, 349c, 1735c.

Delaware: *Revised Code of Delaware*, 1935, chaps. 36, 183, and secs. 360, 1501, 1563, 4704, 5244; *Laws of the State of Delaware . . . 1937*, chaps. 92, 93. Florida: *The Compiled General Laws of Florida*, 1927, secs. 110-116, 490-492, 4863, 5054-5075, 5712, 5713, 5723, 7492, 7495; *General Acts and Resolutions . . . 1935*, chap. 17173.

Georgia: *The Code of Georgia of 1933*, title 63; chap. 40-8; secs. 24-2715, 26-2801, 38-620, 38-621, 89-9903, 89-9905. Idaho: *Idaho Code*, 1932, secs. 17-901, 17-902, 57-1001, 57-1002, 57-1003, 57-1009, 57-1011. Illinois: *Illinois Revised Statutes*, 1937, chap. 35, sec. 9; chap. 38, secs. 401, 461-464; chaps. 51, 116, 128. Indiana: *Annotated Indiana Statutes*, 1933, title 60, chap. 1, title 63, chap. 8, and secs. 2-1617, 2-1620, 2-2707, 10-3004, 10-3005, 10-4514, 26-634, 6-635, 49-3205, 49-3206, 49-3207, 57-119, 57-125; *Laws of the State of Indiana . . . 1935*, chap. 219; *Laws of the State of Indiana . . . 1937*, chaps. 114, 172. Iowa: *Code of Iowa*, 1935, chaps. 233, 518 and secs. 10081, 11299, 11305-11307, 13139.

Kansas: *General Statutes of Kansas (Annotated) 1935*, chap. 21, art. 6, chap. 60, art. 39; chap. 75, art. 27; secs. 19-2601, 21-540, 21-542, 60-2854, 67-224. Kentucky: *Carroll's Kentucky Statutes, Annotated, Baldwin's 1936 Revision*, chap. 106 and secs. 374, 1197, 1626-1634, 1643, 2290a-2. Louisiana: *General Statutes of the State of Louisiana*, 1932, title 54, chaps. 1-3 and secs. 7763, 7883-7890, 9290; *Acts Passed by the Legislature of the State of Louisiana . . . 1936*, no. 258; *Code of Criminal Procedure and Criminal Statutes of the State of Louisiana* (1932), secs. 457, 459, 1066.

Maine: *The Revised Statutes of the State of Maine . . . 1930*, chap. 5, secs. 66, 68, chap. 15, secs. 15, 16, 19, chap. 92, sec. 11, chap. 127, sec. 9, chap. 131, sec. 1, chap. 132, secs. 1, 7; *Public Laws of the State of Maine . . . 1931*, chap. 45; *Public Laws of the State of Maine . . . 1933*, chap. 191; *Public Laws of the State of Maine . . . 1935*, chap. 99. Maryland: *The Annotated Code of the Public General Laws of Maryland* (1924), art. 26, sec. 13, art. 27, secs. 100, 126, art. 35, secs. 55-

At the present time, thirty-three states have official state agencies for the centralization and administration of noncurrent state

70, art. 54, secs. 10-17, 49-51; 1935 *Cumulative Supplement to the Annotated Code of the Public General Laws of Maryland*, art. 41, secs. 87A-87E, art. 54, sec. 52. Massachusetts: *Annotated Laws of Massachusetts* (1932-1933), chap. 4, sec. 7, chap. 66, chap. 90, sec. 30, chap. 233, sec. 76; *Annotated Laws of Massachusetts*, 1937 *Cumulative Supplement*, chap. 66, sec. 3. Michigan: *The Compiled Laws of the State of Michigan*, 1929, chap. 145 and secs. 2713, 2714, 13898-13901, 14172-14180, 14193, 15301-15309, 16899, 16907, 17018, 17048. Minnesota: *Mason's Minnesota Statutes*, 1927, secs. 666, 836-1, 891, 987, 988, 2535-1, 8008-1, 8008-2, 8764-8766, 9862, 9999, 10013, 10014, 10363; 1936 *Supplement to Mason's Minnesota Statutes*, 1927, secs. 8992-3, 8992-4. Mississippi: *Mississippi Code of 1930*, chaps. 47, 78, and secs. 224, 350, 778, 895, 1015, 1066, 1073, 1564. Missouri: *The Revised Statutes of the State of Missouri*, 1929, chap. 8, art. 1, chap. 26 and secs. 4072, 4073, 11377, 11419, 11690, 12044, 12116. Montana: *The Revised Codes of Montana of 1935*, secs. 455, 455.1, 455.2, 455.3, 455.4, 460-462, 10540, 10542, 10543, 10568, 10597, 10873, 10874; *Laws, Resolutions and Memorials of . . . Montana . . . 1937*, chap. 118.

Nebraska: *Compiled Statutes of Nebraska*, 1929, chap. 82 and secs. 20-1280, 20-1281, 20-1285 to 20-1293, 26-245, 28-711, 84-712, 84-713. Nevada: *Nevada Compiled Laws*, 1929, secs. 2115, 2976, 4817, 4819, 5620, 7413, 8955, 8956, 9177-9193, 10028, 10029. New Hampshire: *The Public Laws of the State of New Hampshire . . .* (1925), chap. 10, sec. 19, chap. 14, sec. 16, chap. 15, sec. 5, chap. 38, sec. 23, chap. 47, secs. 46-49, 52, chap. 53, secs. 3, 8, chap. 320, secs. 4, 11, chap. 336, sec. 34, chap. 389, sec. 6; *Laws of the State of New Hampshire . . . 1935*, chap. 166. New Jersey: *Compiled Statutes of New Jersey* (1911), pp. 1557-1559; *Cumulative Supplement to the Compiled Statutes of New Jersey*, 1911-1924, secs. 48-1750J, 167-3, 167-5, 167-10 to 167-19; 1925-1930 *Supplement to the Compiled Statutes of New Jersey . . . 1911-1924*, secs. 167-8, 167-12, 167-25, 167-26. New Mexico: *New Mexico Statutes, Annotated*, 1929 *Compilation*, chap. 91 and secs. 33-4303, 34-357 to 34-359, 45-610, 45-611, 118-114, 118-115, 118-127, 118-201. New York: *Cahill's Consolidated Laws of New York* (1930), chap. 11, sec. 26, chap. 15, secs. 91, 1112, 1115, 1192-1197, 1199-a, chap. 41, sec. 2050, chap. 48, secs. 65, 66, 80, chap. 56-a, sec. 5; *Cahill's Consolidated Laws of New York*, 1937 *Supplement*, chap. 11-a, sec. 610. North Carolina: *The North Carolina Code of 1935*, secs. 365-384, 943, 950, 952, 1779, 4255, 6141-6145, 7362(1)-7362(9). North Dakota: *The Compiled Laws of the State of North Dakota*, 1913, secs. 122, 682, 695, 706, 5547, 7910-7920, 8518, 8521, 9363, 9364.

Ohio: *Throckmorton's 1929 Annotated Code of Ohio*, secs. 154-55, 154-59, 2479, 2493, 2756, 3610-3614, 8557, 11500, 12345-12367, 13088; *Supplement to Page's Annotated Ohio General Code*, 1926 to 1935, sec. 32-1. Oklahoma: *Oklahoma Statutes Annotated* (1937), title 12, sec. 502, title 16, sec. 27, title 21, secs. 461, 462, 531, title 51, secs. 7, 19, title 53, title 67, chaps. 1-3. Oregon: *Oregon Code*, 1930, title 9, chap. 6 and secs. 9-502, 14-431; *Supplement of 1935 to the Oregon Code*, 1930, sec. 67-237.

Pennsylvania: *Purdon's Pennsylvania Statutes*, 1936, title 16, secs. 111, 3371-3373, title 17, secs. 1951-1953, 2011-2015, title 18, secs. 361, 362, 380, title 28, secs. 91-109, title 65, chap. 3, title 71, sec. 355; *Laws . . . of Pennsylvania . . . 1937*, no. 199. Rhode Island: *General Laws of Rhode Island, Revision of 1923*, chaps. 36, 42; *Acts and Resolves . . . 1927*, chap. 985; *Acts and Resolves . . . 1930*, chap. 1610; *Public Laws . . . 1931*, chap. 1726; *Acts and Resolves . . . 1935*, chaps. 2188, 2250. South Carolina: *Code of Laws of South Carolina*, 1932, secs. 709-736, 837, 1526, 1536, 1548, 1562, 2231-2241, 3867; *Acts and Joint Resolutions . . . 1937*, no. 263. South Dakota: *South Dakota Compiled Laws*, 1929, secs. 2718-2733, 3047, 3048, 3700, 3701, 3742, 3743, 3766; *The Laws . . . of the . . . State of South Dakota* (1935), chap. 177.

archives.³ In nine of these, effective control rests with a political official or department whose archival interest and knowledge is accidental and

Tennessee: *Annotated Code of Tennessee*, 1934, secs. 1867-1873, 2271-2278, 7621, 7623, 7624, 7664, 7681-7700, 9747-9773, 10936-10938, 10942-10944; *Public Acts of the State of Tennessee* . . . 1921, chap. 74; *Public Acts of the State of Tennessee* . . . 1925, chap. 115; 1937 *Cumulative Pocket Supplement, Williams' Tennessee Code Annotated*, secs. 2271.1-2271.6, 2282.1-2282.3. Texas: *Vernon's Annotated Revised Civil Statutes of the State of Texas*, Revision of 1925, arts. 18, 250-260, 3720-3731, 3913, 5434-5446, 6574, 6582-6590; *Vernon's Annotated Penal Code of the State of Texas*, Revision of 1925, arts. 168, 169, 388, 1427; *General Laws* . . . 1935, chap. 275.

Utah: *Revised Statutes of Utah*, 1933, title 85, chap. 5 and secs. 103-26-11, 103-26-70, 103-26-71, 104-47-1, 104-47-2, 104-47-13. Vermont: *The Public Laws of Vermont*, 1933, secs. 1707, 1848-1851, 2316-2320, 3526, 8568; *Acts and Resolves* . . . of the State of Vermont . . . 1937, nos. 10, 229. Virginia: *The Virginia Code of 1936*, chap. 23A and secs. 342c, 3386-3389, 3399, 4516-4518, 5979-5982, 6197, 6201-6203.

Washington: *Remington's Revised Statutes of Washington, Annotated* . . . 1931, secs. 1257-1263, 1270-1277, 1987-10, 2336, 2347, 2348, 4065-4072, 8208-8225, 10611, 10761, 10767, 10767-1, 10880, 10953-10958. West Virginia: *The West Virginia Code of 1937*, secs. 314, 315, 1891(2), 2774-2777, 3964-3984, 5220-5222, 5714, 6020, 6021. Wisconsin: *Wisconsin Statutes*, 1937, secs. 6.83, 14.28, 16.05, 18.01, 18.02, 44.01-44.09, 59.71, 101.32, 140.04, 200.16, 300.21-300.24, 310.10, 328.01-328.38, 343.68, 346.63. Wyoming: *Wyoming Revised Statutes*, 1931, secs. 30-108, 32-333 to 32-335, 62-2002 to 62-2007, 88-401 to 88-404, 89-1732, 109-1409; *Supplement to Wyoming Revised Statutes*, 1934, *Annotated*, sec. 109-307.

³ The state archival agencies in the thirty-three states are:

California, secretary of state, who appoints a keeper of archives; Georgia, the Department of Archives and History, whose director is appointed by the secretary of state; Illinois, the Archives Division in the State Library, which is administered by the secretary of state, who is state librarian; Indiana, the Indiana State Library, which is in the Department of Education but is controlled directly by the governor; Tennessee, the Division of Library and Archives, whose administrative head is appointed by the commissioner of education with the approval of the governor; West Virginia, the Department of Archives and History, whose head is appointed and controlled by the governor; New York, the State Library and also the Division of Public Records, both in the Department of Education; Pennsylvania, the State Library and Museum in the Department of Education, whose superintendent appoints the state librarian; Washington, the appointive director of business control, supervisor of the archives, which are actually kept by the state librarian, who serves without extra pay as archivist.

Arizona, the Division of History and Archives in the Department of Library and Archives controlled by the Board of Curators appointed by the governor; Connecticut, the State Library, whose head is appointed by the State Library Committee composed of the governor and four members elected biennially by the General Assembly; Texas, the Texas State Library controlled by a commission of five appointed by the governor for six-year overlapping terms; Virginia, the State Library administered by a librarian elected by the Library Board of five members chosen by the State Board of Education.

Kansas, the Kansas State Historical Society; Minnesota, the Minnesota Historical Society; Nebraska, the Nebraska State Historical Society; New Mexico, the Historical Society of New Mexico; Ohio, the Ohio State Archaeological and Historical Society; Oklahoma, the Oklahoma Historical Society; Utah, the State Historical Society of Utah; Wisconsin, the State Historical Society of Wisconsin. These historical societies are self-governing.

Louisiana, the Department of Archives in Louisiana State University; West Virginia, the Division of Documents in West Virginia University and also the Department of Archives and History at the state capital.

secondary—the secretary of state in California, Georgia and Illinois; the governor in Indiana, Tennessee and West Virginia; the Department of Education in New York and Pennsylvania; and the director of business control in Washington. Twenty-five states vest real control in bodies independent of or only indirectly responsible to political officials—the state library or library department in Arizona, Connecticut, Texas and Virginia; a self-governing historical society in Kansas, Minnesota, Nebraska, New Mexico, Ohio, Oklahoma, Utah and Wisconsin; the state university in Louisiana and West Virginia; and a separate, independent state agency in the others: an historical, archives or records commission in Arkansas, Delaware, Maryland, Michigan, New Jersey, North Carolina, South Carolina and Vermont; and a distinct department in Alabama, Iowa and Mississippi. The administrative heads of these twenty-five state archival agencies are generally selected and controlled directly by small non-salaried boards—self-perpetuating, elected by historical societies, composed of ex-officio members who are educators, historians and public officials or appointed by the governor for long, overlapping terms.

In all thirty-three states with state archival agencies the law contemplates the centralization of noncurrent state archives, and likewise noncurrent local archives in all except California, Ohio and Wisconsin. Generally the state and local officials are authorized to transfer their noncurrent archives to the state agency, though in several cases the law empowers the state agency to collect or directs the custodians

Arkansas, the Arkansas History Commission of nine members, three ex-officio and six appointees of the governor for twelve-year overlapping terms; Delaware, the Public Archives Commission of six appointees of the governor for four-year terms; Maryland, the Hall of Records Commission of public officials and educators; Michigan, the Michigan Historical Commission of the governor and six appointees for six-year overlapping terms; New Jersey, the Public Record Office governed by a board of commissioners consisting of seven state officials; North Carolina, the North Carolina Historical Commission of five appointees of the governor for six-year overlapping terms; South Carolina, the Historical Commission of South Carolina of eight members, chiefly historians; Vermont, the Public Records Commission of five members, two ex-officio and three appointees of the governor for six-year overlapping terms.

Alabama, the Department of Archives and History controlled by a board of ten trustees which is self-perpetuating for six-year terms with Senate confirmation; Iowa, the Historical, Memorial and Art Department under a board of trustees composed of state officials; Mississippi, the Department of Archives and History controlled by a board of nine trustees which is self-perpetuating for six-year terms with Senate confirmation.

The fifteen states which still rely upon the generally ineffective system of departmental custody and have not established state archival agencies are Colorado, Florida, Idaho, Kentucky, Maine, Massachusetts, Missouri, Montana, Nevada, New Hampshire, North Dakota, Oregon, Rhode Island, South Dakota and Wyoming.

to transfer them.⁴ Usually the centralization of state and local archives is by permission, negotiation and persuasion rather than compulsion.

There is general agreement upon the principle that centralization should be permitted only in case of state and local archives no longer needed in the current business of the public office. Ten states prescribe minimum ages of transferable archives varying from three to one hundred thirty-seven years.⁵ But attempts to define noncurrent or transferable archives in terms of a rigid number of years have been the exception and are open to serious objections. It is considered wiser to trust definition to the judgment and negotiation of archival agencies and public officials.

Uniformity in organization and function of state archival agencies is not necessary, feasible or desirable. But the weight of experience indicates that every state should have an official archival agency with permissive authority to collect and administer noncurrent state and local archives, so constituted and governed as to provide the maximum likelihood that the archival function will be placed in the hands of capable and trained persons who have the greatest possible freedom from political and extraneous influences which tend to vitiate the professional character of archival administration. Though no system is certain of success, a self-governing historical society and a distinct, independent archival agency, governed by a non-salaried, nonpolitical

⁴ In addition to the thirty-three states in which the law authorizes the centralization of noncurrent state archives in the state agencies, Kentucky, Maine, New Hampshire and Oregon have permitted restricted centralization. In twenty-two of the thirty-three states the state officials are authorized to make the transfer, in one case (Ohio) with the consent of the governor. The state agency is empowered to make the transfer in Delaware, Michigan and South Carolina and is required to demand the archives in Texas. The state officials are directed to transfer their noncurrent archives in Alabama, Indiana, Iowa, New Mexico and Oklahoma and are placed under the duty of doing so in Arizona and Nebraska.

In addition to the thirty states in which the law authorizes the centralization of noncurrent local archives in the state agencies, California, Kentucky, Maine, New Hampshire and Rhode Island permit with some restrictions the centralization of local archives in designated agencies. In twenty-six states—Alabama, Arizona, Arkansas, Connecticut, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, New Jersey, New York, North Carolina, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington and West Virginia, the local officials, sometimes with the consent of a local governing authority, are authorized to deposit their noncurrent archives with a designated agency. In Delaware and Michigan the state archival agencies are empowered to collect them. In Nebraska, New Mexico and Oklahoma the local officials are directed to take the initiative in the transfer. Illinois is unique in that local officials may deposit noncurrent archives with the State Historical Library, the State Historical Society, the University library or any incorporated historical society in the county.

⁵ Delaware, Indiana, Iowa, Kansas, Michigan, Nebraska, New York, Utah, Virginia, Wisconsin.

board appointed for long, overlapping terms, are definitely superior systems.

State centralization and administration of noncurrent state and local archives leaves unsolved the larger and more complex problem of producing archives under conditions conducive to their preservation and of administering the current as well as the noncurrent records that remain in the various state and local offices. The obligation of each state and local office to produce its own records and to care for them, in whole or in part, is inescapable; and the states have discovered that the discharge of this obligation cannot be left to the unregulated and unsupervised activity of hundreds of state and local officers. State regulation and supervision should supplement the system of local departmental control. Enlightened opinion and experience suggest the enactment of public records laws embodying in a single chapter or title all state legislation relating to the making, care and availability of public archives and providing for state supervision and enforcement. A distinct, unified public records law emphasizes the importance of archives, more readily disseminates knowledge of the law and sound archival standards among custodians and the public, and facilitates enforcement of the law. No existing state public records law deals adequately with all archival problems; but those of Connecticut, Delaware, Massachusetts, New York, North Carolina and Rhode Island are the best and most complete.⁶

A public records law should clearly define public archives. Among the legal definitions attempted in fifteen states, those of Delaware, Louisiana, Maryland, Massachusetts, New Jersey, New York and North Carolina are best.⁷ In legal phraseology, they define public archives as the records that have accumulated in the conduct of the business of any governmental agent, office or institution.

Though the states generally require certain public officials to make and keep certain records, only Alabama, Massachusetts, North Carolina and Wisconsin have general laws definitely requiring each public officer to make all records necessary to a full knowledge of the activities of his office and designating him as the legal custodian of the records. Every public officer should have the definite responsibility of archival production and custody.

⁶ Other states which have so-called public records laws or have very inadequate groupings of archival legislation are Arizona, Arkansas, Colorado, Florida, Louisiana and Missouri.

⁷ The remaining eight states whose laws contain definitions are California, Indiana, Iowa, Montana, Oregon, Tennessee, Texas and Washington.

About one-fourth of the states have shown legislative concern for the quality of paper and ink used in the making of public archives. The best laws among the eleven states⁸ which legislate with varying effectiveness on the subject of durable paper are in Connecticut, Delaware, Maryland, Massachusetts and New York. These states, as well as Alabama and Arizona, require that all permanent record books in state and local offices be made of permanent paper, the composition of which is prescribed in the law. Among the eight states⁹ requiring durable ink, the best laws are in Connecticut, Delaware, Maryland and Massachusetts. These four states, as well as Alabama and New York, require the use of permanent or durable ink, carbons and ribbons for all public records. A state official or agency must select or approve or contract for the inks in Alabama, Connecticut, Delaware, Maryland and Massachusetts, with the additional requirement of an examination by a state chemist in Connecticut, Delaware and Massachusetts. The state examiner of public records in Connecticut and the Public Archives Commission in Delaware must furnish lists of approved papers and at least four brands of standard inks to all custodians. Definite penalties are prescribed in Connecticut, Delaware and Massachusetts for the violation of the laws relating to paper and ink by custodians.

A considerable volume and variety of state legislation seeks to insure the preservation and care of public archives against abuse by persons and deterioration from use and exposure.

In forty states there are general laws with prohibitions and penalties, applicable to all persons and public archives, for some or all of such abuses as malicious, willful or fraudulent altering, defacing, mutilating, removing, stealing, falsifying and destroying. In the remaining eight states, similar laws are restricted in their application to

⁸ Alabama, Arizona, Connecticut, Delaware, Indiana, Maine, Maryland, Massachusetts, Montana, New York, Virginia. The laws in Montana and Virginia require the best rag stock only for county record books; while those of Indiana and Maine relate only to the record books of the county recorder and register of deeds, respectively. The law of Virginia also requires the best grade of photostat paper in those counties which use the photostat process of recording. The laws in the remaining states specify permanent paper, paper of first grade 100 per cent rag stock, paper of linen rags and new cotton clippings well sized with animal sizing and well finished, or standard millbrand paper with dated watermark. Florida, Kansas, Missouri, Nebraska, Ohio, Oklahoma, Pennsylvania and Virginia have legalized the recording and copying by the photostat process.

⁹ Alabama, Arizona, Connecticut, Delaware, Maryland, Massachusetts, New Mexico, New York. The law in New Mexico relates only to the records of county clerks, while that in Arizona requires the use of standard ink of permanent black color in the transcription of old county records.

designated classes of archives¹⁰ or persons.¹¹ Every state should have a general law prohibiting with penalties every abuse of public archives, including private traffic and lending by custodians. The protection of the archives as well as of persons and property should be the object of the law.

Thirty-four states¹² have laws dealing with the refusal or neglect of any public official to deliver public records to his successor; and in eight others¹³ similar laws have restricted application to all or designated state or local officials. Of the thirty-four states with general laws, seventeen¹⁴ merely prescribe penalties for refusal or neglect to deliver and fifteen¹⁵ set forth legal procedure by which the successor or, in some cases, any person or a designated state official may compel delivery or seize the public archives that are withheld.¹⁶ In New York the successor must demand the records and institute proceedings for recovery. Responsibility and initiative are also placed definitely upon the successor in Massachusetts, New Jersey, North Carolina and Pennsylvania. Massachusetts requires the recording of the official's oath of delivery; and Wisconsin, the filing of the successor's receipt for the records. The loss of public archives incident to changes in office should be lessened by requiring that a written record be made of every delivery, that the successor demand any undelivered records and that in case of neglect or refusal the records be recovered by legal process.

Ten states¹⁷ prescribe legal procedure to compel delivery or seizure

¹⁰ In Arkansas, Connecticut, Delaware, Kentucky, South Carolina, Vermont.

¹¹ In Oregon, to custodians and attorneys; in Pennsylvania, to public officials.

¹² Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin.

¹³ The application is restricted to state officials in South Dakota; to all or certain local officials in Arkansas, Kentucky, Nebraska, New Hampshire and Ohio; to state officials and certain local officials in Texas; and to certain state and local officials in Wyoming.

¹⁴ Arizona, California, Colorado, Florida, Georgia, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Nevada, New Jersey, North Carolina, Rhode Island, Utah, Virginia, Washington.

¹⁵ Alabama, Arkansas, Idaho, Illinois, Michigan, Missouri, Montana, New Mexico, New York, Pennsylvania, South Carolina, Tennessee, Vermont, West Virginia, Wisconsin.

¹⁶ In New Mexico, the attorney-general may replevin the withheld records; but generally the successor applies for a court order that the withholding official appear at a certain time and place. If delivery is not made before the hearing, the court may commit the offender to jail and order the seizure and delivery of the records.

¹⁷ Arkansas, Idaho, Illinois, Missouri, Montana, New Mexico, New York, Tennessee, Vermont, Wisconsin.

of any public archives that are in private possession. Nine others¹⁸ merely prescribe a penalty on the private possessor who fails to deliver them; and in two others¹⁹ the laws are of restricted application. In Massachusetts, New Jersey, New York and North Carolina the custodian must demand delivery; in some other states the custodian or any other person may do so.

Massachusetts has the best general law relating to the care of public archives. It is mandatory that every custodian preserve the records and require record books to be bound properly and substantially and to be repaired, renovated, rebound or copied if worn, damaged or difficult to read. Whoever causes a book to be copied must certify on oath that it is a copy of the original book. The copy then has the force of the original. All public archives must be kept in the rooms where they are ordinarily used. Alabama, North Carolina and Vermont also have general though inadequate laws. Twenty-three additional states²⁰ have laws authorizing or requiring the repair or binding or transcription of local or court records. The State Library in Virginia may secure a court order for the transfer from negligent custodians of any court records before 1801. A good public records law should require every custodian of public archives to bestow such care as is necessary for their preservation.

Thirty-five states²¹ have made legal provision for the restoration of lost, missing or destroyed archives such as records of deeds, wills, mortgages, judgments and other instruments. Restoration is made by rerecording the original or a certified copy and by *ex parte* proceedings by depositions, affidavits and witnesses.

Ten states²² have made some legislative effort to meet the obvious need of regulating the disposition of the archives of defunct or transferred offices or agencies; but in four of these²³ the laws are of re-

¹⁸ Colorado, Louisiana, Massachusetts, Nevada, New Jersey, North Carolina, Pennsylvania, Rhode Island, Virginia.

¹⁹ Alabama and Michigan.

²⁰ Arizona, Arkansas, California, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin. The use of pen and ink in copying local archives in Michigan is unlawful.

²¹ Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

²² Alabama, Delaware, Maine, Massachusetts, New Jersey, New York, North Carolina, Rhode Island, Washington, Wisconsin.

²³ Alabama, Maine, Massachusetts, Wisconsin.

stricted application. The archives of any defunct public office in New Jersey, North Carolina or New York become the possession of the state archival agency; and in Rhode Island, of the secretary of state. The records of a terminating state agency in Delaware go to the Public Archives Commission. In case of a transfer of agency or duties, the archives go with the agency in New York; in Washington, with the duties. When an office and its functions terminate, the best practice suggests that the state archival agency assume custody of the records; if there is no state agency, the governor should decide their custody. When an office is terminated or reduced by a transfer of its functions, the archives should follow the functions.

The important subject of fireproof filing facilities for public archives has received legislative attention in nine states. Such provision for all public records is enjoined as a duty in North Carolina; and in Missouri it is authorized for county records. Fireproof equipment is definitely required for state archives in California and for local archives in Connecticut, Maine, New Hampshire, New York and Rhode Island. The fireproof safes, vaults and receptacles must receive the approval of the state record commissioner and the division of archives and history in Rhode Island and New York, respectively. In Massachusetts, which has the best general law, all custodians of state and local archives except public school teachers, must provide fireproof rooms, safes or vaults, and the rooms must be furnished with fittings of non-combustible materials. By public records laws and every means at their disposal, archivists should combat the spirit of indifference and false economy which has prevented the general use of fireproof buildings, vaults and equipment.

Besides safeguarding the production and preservation of public archives, state laws seek to make them more readily available to administrators and investigators.

All public archives, except as otherwise provided by law, are available for examination at reasonable times under the supervision of the custodians to any person in Arizona, Massachusetts, Montana, Nebraska, Nevada, North Carolina, South Dakota and Wisconsin; to any citizen in Alabama, California, Florida, Idaho, Oregon and Utah; and to any voter or taxpayer in Louisiana. In fifteen other states²⁴ the law provides public access to designated classes of records. Penalties

²⁴ Colorado, Illinois, Indiana, Kansas, Michigan, Minnesota, Mississippi, New Hampshire, North Dakota, Pennsylvania, South Carolina, Virginia, Washington, West Virginia, Wyoming.

are provided in Florida, Louisiana and Wyoming for custodians who refuse access. Permission to copy or photograph the records is sometimes specified. Custodians of public archives in California, Massachusetts, North Carolina and Oregon and of local archives in Nevada and New York must keep their records so arranged as to be easily accessible for convenient use by the public.

Fourteen states²⁵ require every public officer to furnish on demand certified copies of any records open to public examination upon payment of the legal fees; and the remaining thirty-four states have similar provisions relating to designated offices and records.

To meet the frequent demand for public archives as evidence in courts, twenty-four states²⁶ provide that copies of archives certified by custodians are admissible as legal evidence in like case and effect as the originals. In the remaining states the laws apply only to designated records. Copies of records in the custody of the state archival agencies, when certified by or under the seal of the agency, have the same legal force as if made by the original custodian. Certified photographic copies are by law acceptable as legal evidence in Connecticut, Maine and Nebraska. Many official state archival agencies are empowered through publication to increase the availability of public archives.

The mounting accumulations of public archives incidental to the growing number and complexity of governmental functions imperiously demand a reduction in the rate of archival increase, which will not seriously impair the value and impartiality of the mass that is preserved. Hilary Jenkinson contends that no records of the past now in archival custody should be destroyed and that neither the archivist nor the historian is qualified to determine what archives should be destroyed. He suggests an elaborate system of a central register by which the administrator functions as the sole agent for the selection and destruction of a considerable portion of his records before they come into the custody of the archivist.²⁷ The difficulty of its effective administration, the impossibility of its general adoption and the indifferent and irresponsible attitude of many public officials as well as the untrust-

²⁵ Alabama, Connecticut, Idaho, Iowa, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New York, North Carolina, Oregon, Utah.

²⁶ Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Oregon, Utah, Vermont, West Virginia, Wyoming.

²⁷ Hilary Jenkinson, *A Manual of Archive Administration* (London and New York, 1937), 136-190.

worthiness of their knowledge and judgment raise serious doubts as to the practicability and wisdom of the system of a central register for state and local archives in the United States. American experience suggests that the administrator and the archivist share in the determination of what records should be destroyed.

Twenty-one states have made some legal provision for the destruction of public archives. Nine of them²⁸ specify the classes and usually the ages of state or local archives which may be destroyed by the custodians. In three of the states²⁹ custodians are authorized to destroy any useless state archives with the consent of designated state political officials. All custodians of state or local archives may destroy any of their records with the consent of certain designated political agencies in Montana, the state supervisor of records in Massachusetts, and the official state archival agency in Delaware, New Jersey, New York, North Carolina and Vermont. The responsibility for the destruction of state archives in Indiana and of state and local archives in Arizona is vested in the Commission on Public Records and the Department of Library and Archives, respectively. It seems best to prohibit the destruction of public archives by any custodian until he has submitted a descriptive list of the archives whose destruction is proposed and has received the written consent of the state archival agency or some official or board conversant with sound archival economy. The custodian should preserve a descriptive list of the archives destroyed as well as a record of the destruction itself and send copies to the agency which approved the destruction. It is important that the law insure destruction of the condemned records.

A public records law might well permit the destruction under competent state supervision of bulky, relatively unimportant classes of archives of which microfilm copies have been made. These copies should be given the same legal force as the originals.

Some reduction of public archives is possible through the use of uniform, simplified forms. Only the beginnings of legislative effort in this direction have been made by four states—Alabama, Delaware, Montana and Vermont. In advance of scientific studies in the states, little can be said of the possibilities of this method of reduction.

Laws do not command universal obedience nor are they self-enforcing. The system of departmental custody of state and local ar-

²⁸ Maine, Minnesota, Missouri, New Hampshire, Rhode Island, Virginia, Washington, Wisconsin, Wyoming.

²⁹ California, Connecticut, Nebraska.

chives and state regulation through public records laws should be supplemented by expert state supervision, not only to secure better enforcement of the laws but also to provide help and stimulus to custodians. Eleven states have some form of state supervision. The official state archival agency has supervision of certain categories of early archives in Maryland and Virginia and of all public archives in Delaware, New Jersey, New York, North Carolina, Pennsylvania and Vermont. Busy with its problems of collection and administration, the state agency is able to give effective supervision only if, as in New York, it has a competent, full-time supervisor on its staff. Effective supervision is obtained by placing responsibility on a state examiner of public records in Connecticut, a supervisor of public records in Massachusetts and in New York, and a state record commissioner in Rhode Island. The state supervisory authorities are generally directed to examine into and report on the condition of the public archives, to supervise their administration and to enforce the public records laws.

The impressive volume, variety and similarity of state archival legislation in the United States indicate a wide recognition of the essential nature, importance and identity or similarity of the archival problems in the various states. The experience of the states is sufficiently extensive to permit the formulation of a sound and constructive public records law, applying successful principles and practices to most of the archival problems which are common to all of the states. Experience has produced wide agreement upon the subjects that should find place in any well-conceived state system of archival legislation. It should provide for an official state archival agency professionally controlled with authority to collect and administer noncurrent public archives and to supervise all others. It should embody a distinct public records law defining public archives, fixing legal custody, prescribing the quality of paper and ink, outlawing archival abuses, providing for the recovery of archives from retiring public officers as well as private citizens, directing necessary repairs and transcriptions, outlining the procedure for restoring missing archives, governing the disposition of the records of defunct or transferred agencies, requiring or encouraging the use of fireproof equipment, guaranteeing the right of the public to examine and procure certified copies, facilitating the convenient use of archives as legal evidence, regulating the destruction of useless archives and other procedures for reduction in volume, and establishing state supervision. Few if any of these subjects are highly

controversial. On some, the legal provisions might be uniform or even identical throughout the United States; on others, basically similar, with minor differences adapted to varying state needs and conditions. Certainly a model public records law might be written which, if not generally enacted without change, would offer sound standards, suggestion, guidance and stimulus to the states. There can be no general or pronounced improvement in archival administration except by state action. State action must be in the form of laws enacted by state legislatures. State legislatures are responsive to public opinion and the public interest.

The Society of American Archivists is in position to assume active leadership in formulating a model state system of archival legislation based on successful experience and designed to solve the basic archival problems that are common to the states. Its stimulus, advice and support can be of great assistance to systematic movements in the states under local leadership for obtaining action from state legislatures. To strengthen the movement for uniform or similar state archival laws, it is particularly recommended that the Society make definite efforts either through its own Committee on Public Relations or through a special committee to enlist the support of the National Conference of Commissioners on Uniform State Laws. This conference has great prestige among the members of the legal profession and the law makers in state legislatures, most of whose members are drawn from that profession.

The enactment of uniform or similar public records laws by the forty-eight states of this federated nation seems to be the proper and the only effective approach to high and uniform standards and achievement in the administration of state and local archives in the United States.

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