

THE DISPOSAL OF USELESS STATE ARCHIVES¹

WHEN that new and rare species of homo sapiens, the archivist, first made his appearance in "the land of the free and the home of the brave," his initial interest and concern were to prevent the wanton or careless destruction of valuable records which he saw going on all around him. Even today far too many useful archives are being destroyed, even in the best regulated areas, while in the less progressive regions in this field the prime need still is to preserve, to save valuable materials from total loss. Until this problem has been met, the archivist is not in a position to go any further.

In some areas, however, archival science has now made such progress that wanton destruction has been largely stopped. Where this has been accomplished the archivist has won his first important victory and is ready to proceed to something else. He immediately finds himself face to face with a whole flock of problems, one of the most important of which involves the disposal of the masses of useless records which are constantly piling up in public offices. It is all very well to say "preserve the valuable records," but who is to decide what is valuable and what is not? And after an effort has been made to answer that question, what procedures are to be followed in disposing of the records which appear to have no value? In trying to solve these problems, admittedly we may make mistakes, since at present our knowledge and experience in the field are inadequate. It would seem to be our duty, nevertheless, to face the problem and reach the best solution possible. If we fail to do so, the whole matter will simply go by default and a large portion of our valuable records will continue to be lost. The piling up of masses of archives and the need for removing the noncurrent ones from their offices of origin are like the current of a stream which cannot be held back indefinitely. If we do not provide a spillway by means of a regular, legalized procedure for handling such records, the flood will break the dam, sweeping away the good and bad alike.

This is a matter of concern today at all levels of government in our country, from the mayor of a small city or the register of deeds of one of our counties to the president of the United States. In this

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respect municipalities, counties, states, and the federal government are all in the same boat. You have just heard a significant paper on the new federal act on this subject,² and later you are to hear a discussion of the problem as it affects one particular agency of the federal government.³ At some future meeting you will perhaps hear a presentation of the matter as it concerns municipal and county government units. The present study is limited to a discussion of what the various states are doing—or are not doing—in the field.

A survey of the laws passed by the different American states (or the lack of such laws) reveals a wide diversity from those states which have no legislation whatsoever at one extreme to those which have satisfactory laws at the other. Let's begin with those which have no laws. Twenty-one states, Alabama, Arkansas, Florida, Georgia, Idaho, Iowa, Kentucky, Louisiana, Maine, Mississippi, Nebraska, New Mexico, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia as yet appear to have taken no action in this field, so that there is no legalized procedure whatsoever by which officials in those states may dispose of useless records. Since at the same time some of these states have laws prohibiting the destruction of public archives, there is no legal way by which their useless records may be disposed of. Apparently they are supposed to accumulate until every available bit of space is occupied, and then to keep on accumulating. Of course, human nature being what it is, we may be sure that the law is not always obeyed and that quantities of noncurrent records are disposed of in one way or another.

Three states, Missouri, New Hampshire, and Wisconsin, have no general law on this subject but have special laws authorizing certain custodians of records to dispose of specially enumerated series, usually at the end of specified periods of time. In Wisconsin, for instance, the secretary of state, personnel board, industrial commission, board of health, commissioner of insurance, and supreme court are empowered to dispose of certain records after a stated interval in each case, usually either five or ten years. While this plan is better than no plan at all, it is weak in that no competent authority passes on the question of whether the records to be disposed of have historical

² "The Federal Disposal Act of July 7, 1943," by Marcus W. Price.

³ "Regulations Governing the Preservation and Destruction of Records of Persons Subject to Parts I, III, and IV of the Interstate Commerce Act," by C. D. Crandall.

value, with the result that there is danger of the destruction of useful materials. In Wisconsin, as a matter of fact, the law specifically authorizes the disposal of petitions for new party tickets, petitions and memorials to either house of the legislature, certain copies of legislative committee hearings and minutes of committees, and other items which probably would not be authorized for disposal by competent archivists or historians.⁴

Three states, California, Connecticut, and Nevada, permit disposal by the department or official concerned, with the approval of some body or agency other than, and not including, the state archival agency. The California law authorizes the disposal of useless records by the head of any state agency with the approval of the department of finance. Connecticut permits the head of any state agency, with the permission of the attorney general, the comptroller, and the treasurer, to destroy any records more than six years old. In Nevada useless records may be destroyed by the state board of control upon the request of "any state board or officer."⁵ Although such a system seems better than the one mentioned above, its obvious weakness is that no agency or person competent to pass upon the historical value of the records is brought into the picture.

The majority of states having legislation on the subject provide for disposal by the custodian of the records or head of the department with the approval of the state archival agency, state historian, or some other competent person or agency, and also with the approval of the council of state, board of control, or legislature, or else upon authorization of a records commission of which the state archivist or state historian is a member. The sixteen states using such a system in one form or another are Colorado, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Montana, North Carolina, Oklahoma, Oregon, Pennsylvania, Vermont, Virginia, Washington, and Wyoming.

⁴ *Revised Statutes of the State of Missouri*, 1939, Sec. 5108 (p. 1207); Sec. 13041 (p. 3411). New Hampshire, *Revised Laws*, 1942, Ch. 22, Sec. 5 (p. 83); Ch. 115, Sec. 8 (p. 439); Ch. 147, Sec. 9 (p. 602). *Wisconsin Statutes*, 1943, Ch. 14, Sec. 28 (p. 181); Ch. 16, Sec. .05 (p. 209); Ch. 18, Sec. .03 (p. 247); Ch. 44, Sec. .08 (p. 640); Ch. 59, Sec. 23 (p. 804); Ch. 101, Sec. .32 (p. 1612); Ch. 140, Sec. .04 (p. 1910); Ch. 200, Sec. .16 (p. 2280); Ch. 251, Sec. .15 (p. 2621).

⁵ *California Codes, General Laws and Constitution*, 1939 Supplement, Sec. 683 (p. 192). Connecticut, *Cumulative Supplement to the General Statutes*, 1933, Ch. 10, Sec. 40c (p. 13). *Nevada Compiled Laws*, Supplement, 1931-1941, Secs. 7278.11, 7278.12 (pp. 1052-1053).

To give a few examples, in Colorado any custodian of public records, in consultation with the curator of history of the State Historical Society and the attorney general, may dispose of any records which the three agree have "no legal, administrative, or historical value." In Illinois a state records commission, consisting of the state archivist, state historian, and state librarian, together with the department head and division head making the request, may recommend the disposal of records to the legislature, and action may be taken after the necessary legislation has been passed. In Massachusetts the state librarian or a deputy, an assistant attorney general, and the head of the agency with records to dispose of are authorized to take action. In Virginia joint action is required by the head of the department, state librarian, and state comptroller.⁶ Such a system seems better than any of those yet mentioned in that it provides for clearing with an agency or person competent to pass on the historical value of the records, but it also appears to have defects. When a department makes a request of this kind, it usually is in no position to wait until the next session of the legislature or until some board meets at an uncertain date in the future. The very fact that the request is made is usually proof that the space occupied by the records is needed immediately, and if we cannot meet the request promptly we are likely to incur ill will or perhaps absolute refusal to follow the regular procedure. Another weakness would seem to be that a board consisting in whole or in part of persons already busy with other duties cannot possibly give detailed attention to this matter, and the same criticism would seem to apply to a legislature or legislative committee.

Finally there are six states, Arizona, Delaware, Michigan, Minne-

⁶ *Session Laws of Colorado*, 1943, Ch. 151, Secs. 1-12 (pp. 473-475). Kansas, *Session Laws*, 1939, Ch. 307, Secs. 1-6 (pp. 582-583). Illinois, *Laws*, 1943, pp. 1055-1057; *Revised Statutes*, 1943, Ch. 116, Secs. 39-43 (p. 2616). Indiana, *Acts*, 1935, Ch. 219 (pp. 1035-1037). Maine, *Revised Statutes*, 1930, Ch. 29, Sec. 121 (p. 598); *Laws of Maine*, 1943, Ch. 9 (p. 102). *Annotated Code of Maryland*, 1939, Art. 41, Sec. 127 (p. 1750); Art. 41, Sec. 127A (p. 355, 1943 ed.). Massachusetts, *Acts*, 1941, Ch. 450 (pp. 525-526). *Revised Codes of Montana*, 1935, Ch. 52, Secs. 455.1, 455.4 (p. 483). *Public Laws of North Carolina*, 1939, Ch. 249 (pp. 512-513). *Session Laws of Oklahoma*, 1939, Ch. 24, Art. 21 (pp. 111-112). Oregon, *Laws*, 1943, Ch. 317 (pp. 425-426). *Laws of Pennsylvania*, 1937, No. 373, Art. 28, Sec. 524 (p. 1936). Vermont, *Acts and Resolves*, 1937, No. 229, Secs. 1-3 (pp. 279-280); *ibid.*, 1939, No. 245, Secs. 1-2 (p. 288); *ibid.*, 1943, No. 166, Secs. 1-2 (pp. 196-197). Virginia, *Acts*, 1940, Ch. 216, Secs. 353-354 (pp. 342-343); Ch. 239 (p. 392). *Laws of Washington*, 1941, Ch. 109, Secs. 1-7 (pp. 282-283). Wyoming, *Session Laws*, 1943, Ch. 106 (pp. 124-126).

sota, New Jersey, and New York, which permit disposal merely upon the approval of the state archival agency. The Delaware law, for example, simply provides that no official may dispose of public records without the consent of the public archives commission, and in New York the consent of the commissioner of education must be obtained.⁷ Such a law has a number of advantages. First, the responsibility is placed where it ought to rest, namely with the two agencies directly concerned. The department where the records originate or the custodian of the records passes on their administrative value while the archival agency passes on their historical value. There is no buck passing. Second, there need be no long delay. It is unnecessary to wait for a meeting of a board or a legislature, but instead quick action can be taken and the archival agency can thus build up good will by prompt and efficient action. Third, such a law is broad and flexible and properly does not attempt to prescribe detailed procedures. The latter should be worked out by the archival agency, which, as it gains in knowledge and experience, will probably wish to change and improve them from time to time. Legislative action should not be required every time such a change is made.

Several states, including Virginia, New Jersey, Delaware, and Illinois, authorize the disposal of records which have been photographically reproduced. The Delaware act, for instance, provides that when any state agency "shall have photographed, photocopied, or microphotocopied" its records on a quality of film of a standard approved by the public archives commission, "and when such photographs, photocopies, or microphotographs shall be placed in adequately accessible containers and provision made for preserving, examining, and using the same, the head of such agency," with the approval of the state archivist, may dispose of the original records.⁸ Such a law is helpful in that it encourages photographic reproduction of records and authorizes the fixing of standards for this purpose by the state archival agency, but it would appear to be hardly necessary

⁷ Arizona, *Session Laws*, 1937, Ch. 32, Secs. 4-5 (pp. 87-88). *Laws of Delaware*, 1937, Ch. 92 (pp. 219-220); 1943, Ch. 74 (p. 301). Michigan, *Public and Local Acts*, 1943, Act No. 172, 8118 [15.1805], pp. 234-235. *Laws of Minnesota*, 1941, Ch. 553, Secs. 5-6 (pp. 1175-1176). New Jersey, *Laws*, 1941, Ch. 77 (pp. 184-186). *Laws of New York*, 1913, Ch. 424, Sec. 1192 (pp. 890-891); Secs. 1196-1197 (p. 892).

⁸ *Laws of Delaware*, 1943, Ch. 74 (p. 301). *Laws of Illinois*, 1943, p. 1057, Sec. 4. *Laws of New Jersey*, 1941, Ch. 39 (pp. 111-112). *Virginia Code of 1942*, Ch. 23A, Sec. 355 (p. 97); *Acts of Assembly*, 1940, Ch. 216, Sec. 355 (pp. 343-344).

so far as disposal is concerned, since a well drafted act in the latter field provides sufficient authority for this purpose.

In the preceding discussion we have indicated which type of law is best in our own judgment. We believe that a simple act, permitting disposal of useless records by the department of origin or by the custodian, with the approval of the archival agency, is best suited for the purpose. In reaching this conclusion, we have formed the opinion that the law of our own state is not ideal and needs to be amended.

In order to complete the picture, a discussion of procedures is necessary. As we all know, one law may be enforced while another may not, or a good law may be poorly enforced while a poor one may be strictly enforced. We need to go behind the law to see what actually happens.

In general, in those states where there are efficient, active archival agencies the problem receives a good deal of attention while in the states where such an agency is lacking the law is not well enforced. In one case, for example, where the law is said to be adequate, the state historian reports that very little has been accomplished. Among the leading states in the field today are Colorado, Delaware, Illinois, Maryland, Minnesota, New York, North Carolina, Virginia, and Washington.

Probably the best procedures are simple. The department desiring authorization to dispose of records may be required to make the request to the archival agency in writing, describing the records as to bulk, inclusive dates, and the like, stating that they are no longer needed in the conduct of current business, and submitting a sample of each series. The archival agency may then refer the request to its records inspector, who will go into the problem from various angles. The inspector should be a person of pleasing personality and tact, for by his contacts with other agencies he can either make friends and influence people in favor of the archival agency, or he can make enemies and stir up bad feeling.

After the records inspector has made his investigation he will report to the head of the archival agency, recommending certain action. The head may wish to make further study and in the end he may disagree with part or even all of the recommendation. If he agrees that the records may properly be disposed of, he can approve the request and authorize the department concerned to make suit-

able disposal. If, however, he believes that some or all the records may have historical value, he may request that part or all of them be transferred to the archival agency. Usually the requesting department cares not at all what happens to the records just so they are removed to provide needed space. Thus ordinarily there will be no objection if they are transferred to the archival agency rather than disposed of.

Sometimes a question arises regarding confidential archives which appear to have historical value. The department of origin will probably feel that they should be destroyed while the archival agency will want them preserved. In such a case a compromise agreement may sometimes be reached whereby the records are preserved but are sealed for a period of years.

In a number of states schedules for the disposal of valueless archives are being worked out. As has been indicated above, sometimes schedules are provided by law, but it seems better for them to be prepared by the archival agency, in co-operation with the various departments concerned. In that way different series at stated ages can be disposed of without seeking further authorization, thus avoiding the waste of a great deal of time and effort. New York is a leader in this field and the supervisor of public records in that state has made some interesting experiments. The new Illinois law, which is similar to the federal law, provides that once the legislature has authorized the disposal of certain records, the state records commission may thereafter authorize the disposal of similar records even if the legislature is not in session. In preparing schedules for disposal we have barely scratched the surface, and there is yet a great deal to be done. Once an efficient system has been evolved, many of the disposal problems we now face may be expected to grow less difficult or even to disappear altogether.

Perhaps it will not be out of order to describe briefly how we are handling the disposal problem in North Carolina. In 1939 we prevailed upon the legislature to pass a bill authorizing destruction or other disposal of useless records upon recommendation of the custodian, upon further recommendation of the department of archives and history, upon authorization of the council of state, a body consisting of the governor, secretary of state, state treasurer, state auditor, and superintendent of public instruction. Soon after the bill had been passed we sent a copy to the head of every state agency, offering

our co-operation in enforcing the law. Thereafter a few requests for disposal were received from time to time, but it was not until 1943 that things really began to move. Early in the summer of that year the governor, at our request, wrote to the head of each state agency and institution requesting that he designate some member of his staff as records administrator, to handle the agency's records problems in co-operation with the department of archives and history. In most cases the desired action was taken, and a few weeks later we called in our own offices a meeting of the records administrators. The governor attended and made a talk about the importance of the program, after which Dr. R. D. W. Connor, chairman of the department, and several members of the staff explained that we proposed to be of assistance to all other state agencies by (1) preserving valuable noncurrent records, (2) disposing of useless noncurrent records, and (3) meeting current records problems. We likewise explained the procedure to be followed, along the lines recommended above except that our department could not authorize disposal but could merely recommend such action to the council of state. The meeting was attended by more than fifty records administrators, many of them from out of town, and they appeared to be interested and co-operative.

Since the meeting we have been receiving an increasing number of requests for the disposal of records. Sometimes these are made orally, sometimes in writing. In the latter case the letters give a statement as to the dates covered by the various series, the bulk, and other similar matters, and enclose samples of the items which are up for disposal. All such requests are referred to our records inspector, who investigates with the co-operation of the records administrator of the department concerned and reports to the head of our own department. Recommendations for disposal, based upon the inspector's reports, are made to the council of state, which so far has followed our recommendations in every instance. The only difficulty is that the council of state is frequently slow to act, and we will probably seek to have the law amended at the next session of the legislature, providing for disposal by any custodian of state records merely with the approval of the department of archives and history.

We feel that our system is working well, and we are particularly pleased with the willingness to co-operate shown by other state agencies and the good will which we are building up. When the law

has been amended, we feel that we will be in a position to render even better service.

This entire problem is one of importance in winning and maintaining good will for an archival organization. While the archivist is primarily concerned with preserving valuable materials, most other government agencies are mainly interested in getting rid of archives they no longer need. By helping them solve their problems in this latter field we can render them a real service, one which will produce results in good will and perhaps in increased appropriations. No competent archivist can afford to neglect the opportunity thus offered.

The problem of how to dispose of useless state archives—a new field—is one which calls for further thought and effort. We may be confident that, as we continue our work, we will gain a better understanding of the principles involved and evolve more efficient techniques and procedures for the disposal of the vast quantities of worthless records which are now overflowing the offices and storage boxes of every state of the Union.

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