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THE MASSACHUSETTS LAWS
AND COMMISSION OF PUBLIC RECORDS

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Massachusetts was the first one of the United States of America to enact laws concerning public records, and to create a commissioner with power to enforce such laws.

In the year 1639, by an act of the General Court of the Massachusetts Bay Colony, it was « ordered and declared, that henceforward, every judgment, with all the evidence, be recorded in a book, to be kept to posterity. Item, that there be records kept of all wills, administrations, and inventories ; as also of the days of every marriage, birth and death of every person within the jurisdiction. Item, to record all men's houses and lands, being certified under the hands of the men of every town, deputed for the ordering of their affairs. »

It was not until after Massachusetts had become a State, however, in the legislative session of 1811-12, that acts were passed requiring fireproof protection to be provided for any records, and then only for records of the county courts, registries of deeds, and registries of probate, in the form of rooms « of stone ore bricks, » to be built at the expense of the respective counties. The scope of fireproof protection was enlarged, by an act in 1857, to cover public records in the cities and towns, they being required to provide safes for all books and papers of record or registry.

Writing paper of inferior quality was coming so much into use early in the nineteenth century, and was proving so serious a matter, that action was taken in the session of 1815-16 requiring that « from and after the first day of May next [1816] all matters which are to be entered of record in any office of Public Record * * shall be so entered or recorded on paper made wholly of linen of firm texture well glazed and well finished, » clerks and registers being directed « to give a preference * * to linen paper of American or domestic manufacture. »

No law concerning records was made with any penalties for violation, until 1851, when a general act obliged counties, cities and towns, to provide « a suitable place for the safe keeping and preservation of the public records and other valuable documents, where they shall be deposited and securely kept : » to keep all books properly bound and arranged convenient for use ; to make copies of all records becoming worn, mutilated, or illegible ; to see that records were with their proper custodians, and not removed from them ; to have all records open to public inspection, and any person mutilating them to be punished ; and to deposit the records of all extinct churches with the clerk of the city or town in which the church was located ; but the penalties were not large, and there was no one to enforce them, so that little was accomplished.

In 1884, upon the petition of a number of prominent men of the State, the legislature passed a resolve authorizing the governor and council « to appoint a suitable person, who shall serve without compensation, to report to the next legislature upon the condition of all public records of the parishes, towns and counties of this Commonwealth. » The governor selected the late Carroll Davidson Wright, Ph. D., LL. D., then chief of the Massachusetts Bureau of Statistics of Labor, later United States Commissioner of Labor, and President of Clark College, Massachusetts, and work was commenced the next year, information being procured from the various officials by the enumerators sent out to take the State decennial census. A further resolve in 1889, in which

year the report of the commissioner appointed in 1884 was printed and issued, extended the commission for three years, with an annual allowance for salary and expenses of a sum not to exceed four thousand dollars, and the commissioner was instructed « to take such action as may be necessary in order to complete the work begun * * and to put the public records of the parishes, towns and counties of the Commonwealth in the custody and condition contemplated by the various laws relating to such records, and in order to secure their preservation. » Colonel Wright having resigned the office, to take up his duties at Washington, the secretary of the commission, Robert Thaxter Swan, Esq., was appointed commissioner ; and when, in 1892, a legislative act made the commission a permanent one, and established the duties, salary and expenses of the office, Mr. Swan was reappointed. On the death of Mr. Swan, in 1907, the present commissioner was appointed.

Some years ago Mr. Swan prepared a paper upon his experiences, in which he states that, when work was begun, it was the exception where a town or city had adequate protection for its records, many not making even the slightest pretence towards it. Investigation showed that where provision had been made for the safety of current records, none had been made for the older ones. Many county buildings, where so-called fireproof construction had been relied upon, were not fireproof ; and if buildings had been constructed with fireproof rooms, the rooms had been fitted with highly combustible wooden fittings. Files of papers had been stored in out-of-the-way places where they had been eaten by mice, or in cellars where they had rotted from dampness. The town clerk was often the keeper of a country store for general merchandise, carrying a miscellaneous stock including gunpowder, oils, alcohol, and other highly inflammable goods. Kept among this merchandise were the ancient records, in all stages of dilapidation. If by chance the clerk had a safe, it was usually an old one, insufficient in size to hold all the records, and often not fireproof. Many of the recording officers desired better conditions, but they were powerless to improve them.

The founding, about this period, of several patriotic societies based upon descent from ancestors who had done civil or military service in colonial and provincial times stimulated genealogical research and aroused much interest and action towards improvement in the preservation of old records. Attention was particularly called to fading ink in the records; and through the efforts of the commissioner an act was passed in 1894 establishing a State standard ink making its use compulsory, the formula for the ink being the same as that now adopted by the United States Treasury Department. At first the distribution was placed with the secretary of the Commonwealth, but in 1899 it was transferred to the commissioner of public records, at which time the use of typewriting machines for public records was legalized, but with the provision that no ink, ribbon, or pad was to be used « except such as is approved by the commissioner ».

In 1897 there was a further revision and codification of the laws, clearly defining « public records » for the first time, and leaving no doubt as to what should, and should not, be preserved. In addition to previous requirements, no record papers of any kind were to be destroyed without the written approval of the commissioner; every public board or commission was required to designate some person as clerk who was to have charge of the writing and keeping of its records; every department of the Commonwealth, and of every county, city and town, must provide and maintain either fireproof rooms, safes, or vaults for the safe keeping of records, and only non-combustible fittings could be put in the rooms; and a maximum fine of five hundred dollars was fixed for every violation of the law, besides a fine of twenty dollars per month upon every official neglecting or refusing to comply with the law — which penalties have since proved sufficient to enforce the statutes. A further codification in 1902 (see Appendix to this paper) embraces all the laws that are in operation to-day.

The most important work of the commissioner next to securing the records from danger by fire is that of having them repaired and re-bound. The so-called « Emery process »,

by which worn, mutilated or decaying leaves of paper are put between very thin films of silk or other tissue and then fastened, making a transparent covering, was early brought to the attention of the commissioner, and has since been in general use throughout the State for preserving public records. Almost all re-binding has been done in canvas, it having been learned that books so bound will withstand great heat, while leather binding will melt and cause additional injury. An act passed in 1898 gives the commissioner the power to expend, out of the State appropriation for his office, such amount as he considers necessary for repairing and re-binding books for towns that are too poor to apply money for such purpose, and the act has been of great benefit.

To sum up the results of the commission in Massachusetts, they have been :

The erecting of many new and fireproof buildings, the remodelling of old ones to contain fireproof receptacles, and the purchase of fireproof safes, so that every county, city and town, with a few exceptions where necessary changes are now under consideration, has its principal records protected against loss by fire.

The repairing and re-binding, and consequent preservation, of many of the formerly decaying and mutilated records.

The recording on durable paper, with ink that will not fade, of public records throughout all offices.

The bringing of the records into prominence, and making them of the importance with which they ought to be regarded.

As long as records continue to increase and multiply, necessitating additional provision to be made for them, and as long as the recording officials change from time to time and need instruction and supervision, there will be work for the commissioner.

APPENDIX

LAWS

Revised Laws, Chapter 35 OF THE PUBLIC RECORDS

SECTIONS 1-4. — Commissioner of Public Records.

SECTIONS 5-23. — Public Records.

COMMISSIONER OF PUBLIC RECORDS

SECTION 1. There shall be a commissioner of public records, who shall be appointed by the governor, with the advice and consent of the council, for a term of three years, unless sooner removed by the governor.

SECTION 2. He shall receive from the commonwealth an annual salary of twenty-five hundred dollars, and he may expend not more than twenty-five hundred dollars annually for such travelling, clerical and other necessary expenses as the governor and council may approve.

SECTION 3. He shall take the necessary measures to put the records of the counties, cities, towns, churches, parishes or religious societies in the custody and condition required by law and to secure their preservation, and for that purpose he may expend from the amount appropriated for expenses such amount as he considers necessary.

SECTION 4. He shall annually, in January, make a report to the general court, with any recommendations and suggestions as to such records.

PUBLIC RECORDS

SECTION 5. In construing the provisions of this chapter and other statutes, the words « public records » shall, unless a contrary intention clearly appears, mean any written or printed book or paper, any map or plan of the commonwealth or of any county, city or town which is the property thereof and in or on which any entry has been made or is required to be made by law, or which any officer or employee of the commonwealth or of a county, city or town has received or is required to receive for filing, and any book, paper, record or copy mentioned in the six following sections. The word « record » shall, in this chapter, mean any written or printed book, paper, map or plan.

SECTION 6. All matters of public record other than maps and plans shall be entered or recorded on paper made of linen rags and new cotton clippings, well sized with animal sizing and well finished, and preference shall be given to paper of American manufacture marked in water line with the name of the manufacturer.

SECTION 7. The commissioner shall from time to time advertise for proposals to furnish the several departments and offices of the commonwealth, and of the counties, cities or towns in which public records are kept, with ink of a standard, and upon conditions, established by him, at such periods and in such quantities as may be required, and he may make contracts therefor. The inks so furnished, before being accepted by him, shall be examined by a chemist designated by him and, if at any time any of said inks shall be found inferior to the established standard, the commissioner may cancel the contract for furnishing such ink.

SECTION 8. Persons having the care or custody of public records in any department or office of the commonwealth, or of any county, city or town, shall not, except as provided in the following section, use or permit to be used upon any public record written by them or under their direction any ink except ink furnished by the commissioner.

SECTION 9. Such persons shall not use or permit to be used upon such records any ribbon, pad or other device used for printing by typewriting machines, or any ink contained in such ribbon, pad or device, except such as has been approved by the commissioner. If the commissioner finds that an article so approved is inferior to the standard established by him he shall cancel his approval.

SECTION 10. Whoever violates the provisions of the two preceding sections shall be punished by a fine of not more than fifty dollars.

SECTION 11. Every board or commission in charge of a department or office of the commonwealth or of a county, city or town, for which no clerk is otherwise provided by law, shall designate some person as clerk, who shall enter all its votes, orders and proceedings in books and shall have the custody of such books, and the board or commission shall designate an employee or employees who shall have the custody of the other public records of such board or commission. Every sole officer in charge of a department or office of the commonwealth or of a county, city or town who has any public records in such department or office shall have the custody thereof.

SECTION 12. Every city or town clerk shall have the custody of all

records of proprietors of towns, townships, plantations or common lands, if the towns, townships, plantations or common lands to which such records relate, or the larger part thereof, are within his city or town and the proprietors have ceased to be a body politic. The secretary of the commonwealth, clerk of the county commissioners and city or town clerks shall respectively have the custody of all other public records of the commonwealth or of the county, city or town of which he is clerk, if no other disposition of such records is made by law or ordinance, and shall certify copies thereof.

SECTION 13. If a church, parish, religious society, monthly meeting of the people called Friends or Quakers, or any similar body of persons who have associated themselves together for the purpose of holding religious meetings, shall cease for the term of two years to hold such meetings, the persons having the care of any records or registries of such body, or of any officers thereof, shall deliver all such records, except records essential to the control of any property or trust funds belonging to such body, to the clerk of the city or town in which such body is situated and such clerk may certify copies thereof. If any such body, the records or registries of which, or of any officers of which, have been so delivered, shall resume meetings under its former name or shall be legally incorporated, either alone or with a similar body, the clerk of such city or town shall, upon demand in writing by a person duly authorized, deliver such records or registries to him if he shall in writing certify that to the best of his knowledge and belief said meetings are to be continued or such incorporation has been legally completed. The superior court shall have jurisdiction in equity to enforce the provisions of this section.

SECTION 14. Every original paper belonging to the files of the commonwealth, or of any county, city or town, bearing date earlier than the year eighteen hundred, every book of registry or record, every deed to the commonwealth or to any county, city or town, every report of an agent, officer or committee relative to bridges, highways, streets, town ways, sewers or other state, county or municipal interests or matters which are not required to be recorded in a book, and are not so recorded, shall be preserved and safely kept, and every other paper belonging to such files shall be kept for seven years after the latest original entry therein or thereon, unless otherwise provided by law; and no such paper shall be destroyed without the written approval of the commissioner of public records.

SECTION 15. County commissioners, city councils and selectmen

may cause copies of records of counties, cities or towns, of town proprietaries, of proprietors of plantations, townships or common lands, relative to land situated in their county, city or town or of easements relating thereto, to be made for their county, city or town, whether such records are within or without the commonwealth. City councils and selectmen may also cause copies to be made of the records of births, baptisms, marriages and deaths which are kept by a church or parish which is in their city or town.

SECTION 16. Every person who has the custody of any public record books of a county, city or town shall, at its expense, cause them to be properly and substantially bound. He shall have any such books, which may have been left incomplete, made up and completed from the files and usual memoranda, so far as practicable. He shall cause fair and legible copies to be seasonably made of any books which are worn, mutilated or are becoming illegible, and cause them to be repaired, rebound or renovated. He may cause any such books to be placed in the custody of the commissioner of public records, who may have them repaired, renovated or rebound at the expense of the county, city or town to which they belong. Whoever causes such books to be so completed or copied shall attest them, and shall certify, under oath, that they have been made from such files and memoranda or are copies of the original books. Such books shall then have the force of the original records.

SECTION 17. Every person who has the custody of any public records shall, at reasonable times, permit them to be inspected and examined by any person, under his supervision, and shall furnish copies thereof on the payment of a reasonable fee. In cities and towns such inspection and furnishing of copies may be regulated by ordinance or by-law.

SECTION 18. Officers or boards in charge of a state department, county commissioners, city councils and selectmen shall, at the expense of the commonwealth, county, city or town, respectively, provide and maintain fireproof rooms, safes or vaults for the safe keeping of the public records of their department, county, city or town, other than the records in the custody of teachers of the public schools, and shall furnish such rooms only with fittings of non-combustible materials.

SECTION 19. All such records shall be kept in the rooms in which they are ordinarily used, and so arranged that they can be conve-

niently examined and referred to. When not in use, they shall be kept in the fireproof rooms, vaults or safes provided for them.

SECTION 20. Whoever is entitled by law to the custody of public records shall demand the same from any person in whose possession they may be, and he shall forthwith deliver the same to him.

SECTION 21. Whoever has the custody of any public records shall, upon the expiration of his term of office, employment or authority, deliver over to his successor all such records which he is not authorized by law to retain, and shall make oath that he has so delivered them, according as they are the records of the commonwealth or of a county, city or town, before the secretary of the commonwealth, the clerk of the county commissioners or the city or town clerk, who shall, respectively, make a record of such oath.

SECTION 22. Whoever unlawfully keeps in his possession any public record or removes the same from the room in which it is usually kept, or alters, defaces, mutilates or destroys any public record or violates any provision of this chapter shall, for each offence, be punished by a fine of not less than ten nor more than five hundred dollars. A public officer who refuses or neglects to perform any duty required of him by this chapter shall, for each month of such neglect or refusal, be punished by a fine of not more than twenty dollars.

SECTION 23. The provisions of this chapter shall not apply to the records of the general court. (The provisions of sections five and seventeen of this chapter shall not apply to declarations, affidavits and other papers filed by claimants in the office of the commissioner of state aid and pensions ; nor to any records kept by said commissioner for use for reference by the officials of his department).

Revised Laws, Chapter 162

SECTION 51. County commissioners shall provide and maintain suitable rooms for the use of the probate courts, ample fireproof rooms and suitable alcoves, cases, and boxes for the safe keeping of all records, files, papers, and documents which belong to the several registries of probate, and shall also provide all books which may be necessary for keeping the records, and all printed blanks and stationery which are used in probate proceedings.

SECTION 52. If in the opinion of a justice of the supreme judicial

court the fireproof rooms provided under the preceding section are insufficient, he shall upon application of the judge or register of probate of the county, certify the need of additional accommodations to the county commissioners of such county, and they shall forthwith provide such additional fireproof rooms and other accommodations as may be necessary.