

# STATE ARCHIVES AND RECORDS COMMISSION

## Minutes of the Quarterly Meeting

December 13, 2001

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The State Archives and Records Commission met December 13, 2001, in the Board Room, Kentucky Department for Libraries and Archives (KDLA).

Members present: James A. Nelson, Chairman; Dr. Thomas D. Clark, representing the University of Kentucky; Ed Hatchett, Auditor of Public Accounts; Paul F. Coates, representing Citizens-at-Large; Lynn Hollingsworth, representing the Kentucky Historical Society; Shelia E. Heflin, representing the Kentucky Library Association; and Dr. William J. Morison, representing regional colleges and universities.

Representatives present: Louis DeLuca, representing Dr. Marlene M. Helm, Secretary, Education, Arts and Humanities Cabinet; Leslie Smith, representing Robert Sherman, Director, Legislative Research Commission; Amye Bensenhaver, representing A. B. Chandler, III, Attorney General; C. J. Chapman, representing Aldona K. Valicenti, Chief Information Officer, Governor's Office for Technology; Brandon Haynes, representing Joseph E. Lambert, Chief Justice, Supreme Court; Patti Jones Dixon, representing Ed Hatchett, Auditor of Public Accounts; and Geoff Pinkerton, representing Dr. James R. Ramsey, State Budget Director, Governor's

Office for Policy and Management.

NOTE: Mr. Hatchett was called away and could not stay for the entire meeting. Ms. Patti Jones Dixon acted as his representative, as noted above.

Members not present or represented: Carolyn Nichols, representing local governments; Cheryl Jones, representing Citizens-at-Large; Dr. Linda E. Johnson, representing Citizens-at-Large; and Dr. Jack D. Ellis, representing Citizens-at-Large.

Public Records Division staff present: Richard N. Belding, Director, Public Records Division; Diana Moses, Manager, State Records Branch; Glen McAninch, Manager, Technology Analysis and Support Branch; Jim Cundy, Regional Administrator; Lena Jones Turner, Regional Administrator; Steve Ramey, AOC Regional Administrator; Mark Myers, Resource Management Analyst; and B. J. Webster, Administrative Secretary.

Guests present: Lt. Gary Dodson, Metropolitan Correctional Services, Louisville; Rondia Burdine and Phil Adkins, Department for Public Health, Cabinet for Health Services.

For the record, Nelson called for introductions of Commission members.

Dr. Clark made a motion to accept the minutes of the previous Commission meeting, seconded by Mr. Coates. The vote by members and representatives present to accept the minutes of the previous Commission meeting was unanimous.

The order of the agenda was changed to accommodate the guests present.

## **NEW OR REVISED RECORDS RETENTION SCHEDULES**

### **Local Health Department Schedule**

Jerry Carlton was the regional administrator working on this revised schedule. In his absence, Lena Jones Turner presented the submission. The schedule consists of 48 series.

Local health departments administer and enforce all applicable public health laws and all of the rules and regulations of the Cabinet for Health Services and local boards of health. The departments are under the supervision of the local boards and the cabinet. The local departments formulate, promote, establish and execute policies, plans and programs to safeguard the health of the people of the respective counties. The departments also maintain and implement facilities and services for the purpose of protecting the public health. Funding for the departments comes from federal, state and local sources.

Turner said that the submission represented a total revision of the retention schedule for the local health departments. Ms. Allison and Ms. Burdine worked very closely with Carlton on the revision. Ms. Burdine commented that by lowering the retention period for medical files from 26 years to ten, it would no longer be necessary for the health departments to transfer records to the State Records Center. Reducing the retention of the files would mean that they could remain on-site in the local health departments.

Nelson asked if there was renewed interest in the records of health departments, in light of the events of September 11, 2001. Mr. Adkins said that there had not been any increase in the retrievals of records or inquiries regarding immunizations, such as small pox.

Dr. Clark made a motion to adopt this revised schedule, seconded by Mr. Hatchett. The vote by members and representatives present to adopt the revised schedule was unanimous.

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## **Jefferson County - Metropolitan Correctional Services**

Jim Cundy was the regional administrator working on this schedule change. The series being added to the schedule are L5166 to L5175. The series being changed are L3124 to L3127, and L3129.

KRS 67B.010, enacted in 1972, empowered counties containing a city of the first class, where the offices of sheriff and jailer had been consolidated, to create a metropolitan correctional services department. The department, currently in existence in Jefferson County, is vested with the duty, responsibility and power to maintain and operate the correctional, detention and rehabilitation facilities in the county.

Cundy said that the agency would like to keep the Inmate Record Folder, series L3129, for two years, rather than the five specified in the schedule and on the Description and Analysis form. The agency didn't intend that the retention be changed from the original two years. Officer Dodson said that the mistake was his. A two-year retention period is sufficient, as an inmate can only be incarcerated in the facility for one year. The additional year provides time for any legal action on the part of the inmate. Such actions must be filed within one year after release. If approved, Cundy will make the appropriate changes to the schedule to reflect a two-year retention period.

Dr. Clark made a motion to adopt the schedule changes, seconded by Mr. Haynes. The vote by members and representatives present to adopt the schedule changes was unanimous.

## **Department of Education - District Support Services - School Finance**

Diana Moses was the records analyst working on this revised schedule. The schedule consists of 25 series. Ten new series were added to the schedule, seven were closed and 32 were deleted.

The structure of the Department of Education was significantly affected in 1990 with enactment of HB 814 and HB 940. The Workforce Development Cabinet was created in HB 814, which required the Department to transfer to the new cabinet programs dealing with adult education, vocational rehabilitation and adult basic education. HB 940, the Kentucky Education Reform Act of 1990 (KERA), was enacted in response to a 1989 Kentucky Supreme Court decision that held Kentucky's system of common schools to be unconstitutional. KERA provided that positions in the Department were to be abolished, that all employees were to be terminated at the close of business June 30, 1991, and directed the new commissioner of education to reorganize the Department with new positions, as of July 1, 1991.

The last reorganization of the Department was December 17, 1998, pursuant to Executive Order 98-1671. The Department provides assistance with curriculum design, school administration and finance, monitoring school district management, research and planning, and other services.

Moses explained that the submission was a revision of a portion of the retention schedule for the Department of Education. School Finance has a direct relationship with local school districts and accounts for much of the statistical reporting that relates to operations of local schools.

Nelson asked if local school districts also maintained counterparts to the records scheduled under School Finance. Moses responded that they did. In response to a question from Dr. Clark, Moses said that many of the records previously created in a paper format had been changed to an electronic one, which would reduce the amount of physical space needed for paper storage. It is anticipated that those records deemed to have permanent value would come into the Archives in an electronic format, rather than a paper one.

The deletion of some of the series from the schedule is due to records being consolidated into one series. The schedule for the Department of Education was initially approved in April 1981 and many of the records that were scheduled then have been deleted because they no longer exist or are no longer created. In some instances, the General Schedule for State Agencies would be used to manage some of the deleted records.

Dr. Clark made a motion to adopt this revised schedule, seconded by Dr. Ellis. The vote by members and representatives present to adopt the revised schedule was unanimous.

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### **General Schedule for Electronic Records (Draft)**

Nelson explained that the next item was for informational purposes only. The Division was not asking for approval of the schedule at this time. It is anticipated that the schedule would be submitted for approval at the March 2002 meeting of the Commission.

Mark Myers, electronic records specialist, worked on the creation of the draft schedule.

Myers said that the development and distribution of a revised electronic records schedule is one of the tasks that Dr. Greg Hunter, consultant to the Department, identified as an initiative that could be realized in a relatively short period of time, and that would not be dependent on the availability of funds or other resources that are in short supply. The first electronic records schedule was approved in December 1988, and was based primarily on a similar one initiated by the National Archives and Records Administration (NARA). The intent now is to create a schedule that would be more detailed and that would better reflect electronic recordkeeping in today's environment.

Myers said that he had surveyed other states to obtain the most recent information and that the revised schedule was modeled more after the electronic records schedule developed by the New York State Archives. The New York schedule is one that several states have used as the basis for the development of their schedules.

Myers said that the original schedule was very broad, while the revised one is designed to be more detailed and is broken down into more categories that relate to documentation in specific areas. Some of the records may appear to be duplicated, such as those that deal with system documentation. That is necessary, Myers said, due to the many types of documentation, such as hardware and software documentation, that are now being created.

The introduction that accompanies the schedule is designed to explain the various types of electronic records and their uses, and points out linkages to policy documents, found on KDLA's web site and other states' sites. The series that are included are not permanent records, but rather the supporting records that are created and used in the maintenance of systems.

Nelson asked what the next step would be. Myers said that the schedule is completed, from the perspective of the Division. The intent is to give the Commission the opportunity to review and comment on the schedule, before it is submitted for approval. Other groups and agencies, such as the Governor's Office for Technology, would also have the opportunity to review and comment on the schedule before its formal submission to the Commission in March. Belding said that if the schedule were approved in March, the Technology Analysis and Support Branch would be doing some briefing workshops with state and local agencies on how to implement and use it. Belding said that there was a lot of interest, particularly from local officials, in having such a schedule available.

Myers commented on the re-design of the schedule, which is printed in a landscape format, rather than a vertical one, to better display the information about each series. The schedule contains a column for description, function and use, contents, and the rationale for retention, which are items that are typically found in a description and analysis form.

DeLuca said that the distribution and implementation of the schedule, after its approval, presents a very interesting challenge in how state and local personnel will be trained to use the schedule. Belding said that

such training was not a one-time thing, but something that would occur frequently and over a period of time. Nelson said that an expanded training facility was to be a major part of the request for an addition to the Coffee Tree location. Since the capital construction request for the addition was not funded, the Department would try to work closely with the Governor's Office for Technology in the area of providing training.

Clark asked what physical form the records contained in the schedule would take. McAninch said that records would be created in both a paper and electronic format, but that most would be in an electronic form. In response to a question from Belding, McAninch said that the data processing community, in addition to records officers, would be the most likely users of the schedule. Coates asked if it would be helpful to allude to the fact that most of the records in the General Schedule were temporary ones. Coates believes the title *General Schedule for Electronic and Related Records* might be too specific and that it wasn't clear that permanent records were not included. Myers explained that the records identified in the schedule would be held for extended periods, that is, for the life of systems, but not permanently. The records in the schedule do not represent the program records of agencies, but support records for systems. Belding said it would be helpful to underscore that these records are needed for business continuity. Many of the records contained in the schedule document authenticity of systems, which is needed in legal and audit environments and to recreate systems after a disaster.

Clark asked about re-entry into the records. Belding said that Myers and McAninch had referred to the fact that these are records that are essential to agencies in their current use and management of electronic systems. To the extent that a system is an important part of an agency's work, then access to the information could be fairly high at times.

Ms. Chapman asked if the schedule would be finalized before the creation of the proposed Electronic Records Advisory Committee (ERAC). (Please refer to Other Business for information about the creation of the committee.) Belding said that Division staff had put forth its best effort in the development of the schedule. The schedule would be circulated to other groups, such as the ERAC, that the Division would like to have review and comment from.

McAninch commented on Coates' remark regarding the title of the schedule. McAninch said that staff recognizes that some of the records that are connected to a system are not necessarily in an electronic format. The schedule is intended to be a general one and only relates to those records that are contained in most electronic systems. Coates said he would like the schedule to be more transparent so that the universe of the records could be seen. Coates said he believed that the schedule would contain not just the records associated with system support but also records that had more far-ranging consequences. McAninch said the schedule is fairly limited in order to deal with the various types of systems being created. Agencies would use their agency-specific schedules to manage electronic systems that are programmatic in nature and that may contain information of a permanent value.

Morison complimented McAninch and Myers on their work and said that the approval and implementation of the schedule promises to be a major event for the Department.

Bensenhaver said that she had attended a Council on Governmental Ethics Seminar where Connecticut, a leading State on freedom of information issues, was working to address management issues related to voice mail. Myers said that management and preservation of voice mail, as well as web sites, had been discussed, but that no firm decisions about their status had been reached. McAninch said that, typically, telephone systems don't have enough storage capacity to handle the amount of voice mail that would be generated.

### **Public Library and Library Board Retention Schedule**

Turner was the regional administrator working on this schedule revision. The submission represents a total revision of the previous schedule, which was approved in 1983. The 44 series listed in the previous schedule

have been reduced to five. The series are L0197, Donor Register and Receipt File; L0198, Holding File; L0200, Acquisitions File; L0202, Patron Transaction File; and L0224, Patron Registration File.

The series deleted from the schedule are managed using the *Local Government General Records Retention Schedule*. The local libraries will use the General Records Schedule and the agency-specific schedule when making disposition of records. The revised schedule is applicable to all public libraries. Belding asked if there would be briefings or workshops for local libraries on the implementation of the schedule. Dissemination of the schedule will be through the Department's web site and State Library Services Division, according to Turner. Staff in local libraries will be briefed, as appropriate.

In response to a question from Heflin, Turner said that the schedule was revised in cooperation with several libraries.

Dr. Clark made a motion to adopt this revised schedule, seconded by Dr. Morison. The vote by members and representatives present to adopt the revised schedule was unanimous.

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### **Department of Veterans' Affairs - Veterans' Centers**

Moses was the records analyst working on this schedule revision. The series being added to the schedule is 05326, Residents' Financial/Veterans Affairs File. The series being changed are 04603, Medical Record File, from 20 years to five; and 04604, Incident Report File, from 20 years to three.

The Bureau of Veterans' Affairs was created in 1972. In 1974, the Bureau became the Advisory Board for Veterans' Affairs and the Department for Human resources assumed some duties. In 1980, the Center for Veterans' Affairs was created in the Department for Military Affairs; it assumed the duties that had been assigned to the Department for Human Resources. In 1996, with enactment of HB 90, the Center was merged into the newly created Department of Veterans' Affairs.

The Department provides assistance and support to citizens of the Commonwealth who are veterans of the military services, their families, dependents, and/or survivors, in the presentation, proof, and establishment of all claims, privileges, rights and other benefits they may have under state, federal or local law (KRS 40.310). It collects data and information regarding facilities and services available to veterans, their families and dependents.

The Office of Kentucky Veterans' Centers was created by Executive Order 98-1594, issued December 3, 1998 and confirmed by 2000 HB 94. The Office is responsible for operating the state veterans' nursing homes, a responsibility transferred to it from the Finance and Administration Cabinet.

Moses explained that the submission was an update to the schedule for Veterans' Centers. The schedule was initially approved when there was only one Center, the Thomson-Hood Veterans' Center, which opened approximately ten years ago and which is located in Wilmore, Kentucky. Two additional facilities have been built since then and are located in the eastern and western part of the state. The schedule would be applicable to all three centers.

Moses said that Mr. Coates, during the Advisory Committee meeting, had made a suggestion that the disposition of series 04603, Medical Record File, be changed from "destroy five years after last date of service" to "destroy five years after resident's death or discharge." Moses said the change had been made.

Dr. Morison made a motion to adopt this revised schedule, seconded by Mr. Coates. The vote by members and representatives present to adopt the revised schedule was unanimous.

## **County Clerk Schedule**

Carlton was the regional administrator working on this schedule change. In his absence, Turner presented the submission. The series being added to the schedule is L1349, Federal Tax Liens. By statute federal tax liens are to be filed in the County Clerk's Office and the original maintained in numerical order, in a file designated "Federal Lien Notices," or in an encumbrance book. The majority of the liens are filed in an encumbrance book, with discharges being filed in a release book. Some liens may be filed in a *Lis Pendens* book, along with the discharges, and some may be recorded in a book designated as a federal lien book.

The series was inadvertently left off the County Clerk schedule when it was submitted to the Commission for approval in September 2001.

Mr. Coates made a motion to adopt this schedule change, seconded by Dr. Morison. The vote by members and representatives present to adopt the schedule change was unanimous.

The schedules for the Department of Education were considered as a group.

## **Department of Education - Education Technology**

Moses was the records analyst working on this schedule change. The series being added to the schedule is 05325, Telecommunications Billing File. It documents the telephone charges to each school in Kentucky so that the schools can receive discounts that are available through the Universal Service Fund.

Please see below for motion and vote.

## **Department of Education - Results Planning**

The series being added to the schedule is 05317, Classified Staff Data Report. It documents salary information on classified staff employed by local school districts.

Dr. Clark made a motion to adopt the schedule changes for the Department of Education, seconded by Dr. Morison. The vote by members and representatives present to adopt the schedule changes was unanimous.

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## **Lexington/Fayette Urban County Government Schedule - Public Safety - Police Department - Internal Affairs**

Carlton was the regional administrator working on this schedule change. In his absence, Cundy presented the submission. The series being deleted is L4906, Informal Complaints/Internal Investigation File. The series being changed is L4905, from Formal Complaints/Internal Investigation File, to Complaints/Internal Investigation File. The disposition for the series is to destroy the files three years after termination of an officer's employment. The change makes the retention period for internal investigation files uniform across Kentucky, with no distinction made between "formal" and "informal."

Mr. Coates made a motion to adopt this schedule change, seconded by Dr. Morison. The vote by members and representatives present to adopt the schedule change was unanimous.

## **Public School District Schedule - Central Office - Pupil Personnel**

Cundy was the regional administrator working on this schedule change. The series being added to the schedule is L5165, Kentucky Student Career/Transition Plan. The series is required to be completed for those students enrolled in a vocational/technical classroom (grades 8-12) and who are receiving Carl D. Perkins

grants. The graduating class of 2001 will be the last class to complete the plans.

Dr. Clark made a motion to adopt this schedule change, seconded by Dr. Morison. The vote by members and representatives present to adopt the schedule change was unanimous.

The next item was **Other Business**. The items of Other Business discussed were:

- **For the Record** newsletter and recent *Public Archives Symposium*

Nelson reminded members that the Friends of Kentucky Public Archives, Inc. supported the newsletter. The publication focuses wider attention on issues related to archives and records management. The Public Archives Symposium, also sponsored by the Friends organization, was featured in a recent issue. Belding said that the Friends initiated the Symposium in 1989, with the intention of helping the general public to get a better understanding of the way in which historians and other groups use archival resources and how those resources contribute to new scholarship.

Belding said the Department appreciates the work of the Friends and complimented Coates on his re-election as president of the organization, at its recent annual meeting.

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- New brochure on available services, Document Preservation Laboratory

The new brochure, which provides information about services offered through the Department's Document Preservation Laboratory, was distributed to the Commission members for their review. The Laboratory operates on a cost-recovery basis, as do other areas of the Department.

- Capital Planning Advisory Board recommendations and next steps

Nelson said that the Department's capital construction request for an addition to the Coffee Tree location once more was not recommended for funding. Governor Patton has said that there would be no requests for the funding of new capital construction projects during this period of fiscal constraint, according to Nelson. Nelson said that Department staff would continue to communicate the need for the addition, for future funding considerations.

- Louisville/Jefferson County - merger discussions and assistance on records program issues

Nelson, Belding, Jerry Carlton and Jim Cundy attended a recent meeting of the group, made up of members of the Louisville and Jefferson County governments, that is responsible for dealing with the issues associated with the planned merger. A web site has been created that contains information and reports concerning the merger. The address is: [www.co.jefferson.ky.us/reorganization/reorganization.htm](http://www.co.jefferson.ky.us/reorganization/reorganization.htm). Belding said the site is easily located if an Internet search is undertaken. The site connects with the Greater Louisville Transition Office, which is the body coordinating planning for the merger. A number of functionally specific committees of city and county personnel have been set up to deal with merger issues. Through the site, access can also be gained to a number of study documents that have been completed, and documents that are available through direct contact with the Office. Belding said that the proposed merger is an opportunity for the records programs of the city and county to re-identify themselves to planners and budget officials, to educate them about what the archives and records programs mean to government and how central they are to continued operations, and to work for improved placement and support under the new government structure.

- Document Management Digitization System (DMDS) - Status of Strategic Alliance Services (SAS) Request response

Nelson circulated copies of the DMDS *Strategic Alliance Services (SAS) Request*, issued by the Office of the Chief Information Officer, Governor's Office for Technology (GOT). The document is a request for proposals from a selected list of technology services vendors who have been pre-approved by GOT. McAninch said that the request had been put out for bids and that the responses received would be evaluated. McAninch said a deadline of July 2002 had been set, by which time it is hoped that the system will be designed and testing of its various elements carried out. Purchase of equipment and training of staff would also occur during this timeframe. The request for services will assist the Department in the creation of records in an electronic form and the conversion of records from a paper or microfilm format to a digital one. The Department would also be able to convert digital images to microfilm, for long-term preservation purposes. Securing space to house the additional equipment will be a challenge, Nelson said. Funding for DMDS was received in the 2000 session of the General Assembly, in the amount of \$1.188 million.

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- Electronic Records Advisory Committee (ERAC) - development of a recommended approach document

By way of background, it was recommended in the report submitted by Dr. Greg Hunter, consultant to the Department, that consideration be given to the development of a proposal to create an Electronic Records Advisory Committee. The creation of the committee is something that can be accomplished without the need for additional funding, and which the Department had considered before working with the consultant. Nelson said that staff has worked with GOT, which is very interested in seeing the creation of an advisory committee to work with it, the Commission and the Department to resolve issues of significant challenge in the electronic records area. According to Nelson, there is a lot of national interest in the formation of such committees.

Belding said that the draft proposal for the creation of the committee has benefited from the work of Mark Myers and his review of comparable committees created in other states. The Department also received feedback from Dr. Hunter on various ways of dealing with the question of responsibilities and membership.

- Cooperative work with the Governor's Office for Technology (GOT) on Privacy Committee and Electronic Systems

Nelson said another collaboration point has been working with the committee convened by GOT to deal with privacy issues and access concerns in the electronic records area. The first phase was a survey of all state agencies undertaken by the committee to obtain information about the data contained in systems and access to the data. The Department provided information to agencies taken from retention schedules that identified records that carry legal access restrictions, to provide them with data with which to respond to the survey. Kentucky does not have the equivalent of the Federal Privacy Act, which makes privacy issues of more concern, Nelson said. It is important to know, especially in today's environment, what kind of information is available in an electronic form, what its status is, and how people are accessing the information. The work of the committee, which Belding and McAninch have been involved in, should result in recommendations for how to manage sensitive information created and contained in electronic systems, an important issue as state government moves more aggressively into electronic commerce and the use of digital signatures.

The second phase is to validate a list of the electronic systems that the Department had been accumulating over the years and to attach access restrictions to them, where appropriate. McAninch said there has been a return rate of about 50% from the agencies related to the validation phase.

Nelson said that the former Information Resources Planning process provided the Department with useful information about electronic systems. Also, the state's efforts related to Year 2000 (Y2K) planning also helped to identify electronic systems utilized by agencies.

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- Jacobs memorandum on university records management issues

Nelson referred to the memorandum forwarded to him by William C. Jacobs, a Lexington attorney. A copy of the memorandum was forwarded to the Commission members prior to today's meeting. Nelson said the memorandum requests that the Commission take certain actions with regard to records management issues at the University of Kentucky, specifically directed to records of the former president's administration. Although the memo is lengthy, the author basically maintains that the university did not exercise good records management practices in several areas and that the Department should have done more to correct that situation.

Belding said that most of the issues mentioned in the memorandum arise out of appeals that Jacobs made to denials for access to records requested from the Records Custodian at the University of Kentucky. Jacobs, in turn, appealed the denials to the Office of the Attorney General, and the Attorney General responded with opinions as to whether or not the university had acted in good faith. In several of those cases, the Attorney General forwarded the material to the Department for it to determine if there were issues that staff might want to look into further. Department staff talked on several occasions with records management personnel at the university about some of the issues. Some of the appeals involve issues that, from the perspective of the Department, would be more appropriately settled, and in fact could probably only be settled, by litigation on the part of the requester.

Belding asked Bensenhaver if she had any comments regarding the appeals. Bensenhaver said that since 1994, when the legislature enacted a change to the Open Records Law that recognized an official relationship between records access under the Open Records Law and records management, that there had been established a relationship whereby if a question was presented to the Attorney General that raised a records management issue that could not be resolved on clear open records analysis, then it would be referred to the Department. The Department would then determine, based on its resources, the extent to which it deemed further inquiry was warranted. Bensenhaver said that is how the Opinions or Decisions came to be referred to the Department. Bensenhaver said that it had been her experience that when further inquiry was warranted, the Department conducted it.

Belding said that one of the areas where the Department had tried to invest the most resources was in the development of the State University Model Records Retention Schedule, which was intended to meet the needs of all eight public universities. This was a better approach than in trying to commit resources to scheduling the records of each campus separately, Belding said. It was recognized that there were functional similarities among several of the major areas or units on the campuses. The Model attempted to capture the areas that had a high degree of repetition in the records being created. Staff recognized that there were programs or activities unique to campuses that would need to be scheduled separately. At the time the schedule was assembled, an Advisory Committee on University Records was created. The Committee was made up of university records officers and records management staff, where such staff existed. The Committee reviewed the schedule prior to its submission to the Commission for approval.

Several of the universities have placed the Model on line on their web sites. The University of Louisville and the University of Kentucky both have very well developed and articulated web sites that deal with records management issues, Belding said. Also available through those sites, as well as the Department's web site, is the publication *Managing Government Records: An Introduction to Kentucky's Public Records Laws*. Belding said the booklet, published several years ago by the Department, is essentially a walk through the State Archives and Records Act and how it applies to public employees. Belding said that one of the issues the Department feels very strongly about is its role in helping public employees understand that they have a responsibility under the Act and what that responsibility entails. It is important that employees embrace that

responsibility and act accordingly. Belding said that the Public Records Division and the Department simply do not have the resources, nor do the universities, to have someone standing behind employees to verify that they are carrying out their records responsibilities. The relationship, Belding said, depends on the trust of the public employee to do what is required and expected. It also depends on these responsibilities being regularly communicated to staff.

For example, in the memorandum, Belding said, there is an issue raised with regard to destruction of records from the President's Office. Department staff has made it very clear, over time, that when records are destroyed, a Records Destruction Certificate should be completed to verify or document what was destroyed and that the records were destroyed under the authority of the Commission, that is, under the terms of an approved retention schedule. Belding said the certificate provides what could be called risk management back up for the office destroying the records, because it documents what has been destroyed. The author of the memorandum suggests that there was destruction of records from the President's Office that was not backed up by that information. Department staff spoke to records management staff at the university about the procedure, and they are fully aware of the requirement.

Nelson said the bottom line is that the Department has very limited resources. Nelson said that without question, the memorandum raises serious issues. The Department's role is one of communication and education, to help employees understand their responsibilities. Nelson said that there is a strong legal requirement for public officials to act according to the law. Nelson emphasized again that the Department does not have the resources to do quite as much as some people would like for it to do. The Department has the authority to deal with records management issues through the promulgation of rules and regulations, which it does, Nelson said. Its authority to do more is not clear under statute.

Dr. Clark said there are three or four elements in the memorandum. One relates to the Board of Trustees and related records. Another is the issue of whether the former president of the university underwent the same examination and personnel procedures as other faculty and staff. The other elements relate to records of the Community College and a tenure issue. Belding said that he believed the tenure issue raised was in the context that there may not have been documentation available to support past decisions or conclusions reached with regard to the tenure status of the former president. Clark said that this was not the first time that this issue had been raised at the university. Clark said he did not think that the tenure committee willfully or maliciously destroyed records. They just simply didn't make many records. The committee reviewed such information as it had in hand and then recommended promotion or lack of promotion based on the discussions that took place.

Coates said that Mr. Jacobs hadn't introduced himself to the Commission members, so Coates doesn't know who Jacobs is or whom he represents. He said that Jacobs makes serious accusations and that Coates really doesn't know what he expects the Commission to do. Coates did not believe the memorandum was very clear, and that it was couched in authority references and veiled threats, which Coates said he did not appreciate. He said that there had been other situations in which records had been destroyed, without the permission of the Commission. In the cases that Coates said he remembers it was often janitorial "cleaning up," without anyone knowing what was going on and records would just disappear.

Coates asked if the accusation that records were destroyed was correct. Were records destroyed and no destruction certificate was completed? Coates said that he assumed this was correct and that it had been determined. Belding said that was correct. Belding said that the records related to personnel records of the former president and that the university's legal counsel had responded to the issue in response to a request to access the records, which either could not be produced or did not exist. Belding said he believed that the university suggested that a portion of those personnel records might have been stored in a warehouse building that has since been destroyed, and that some of that destruction may have been inadvertent, due to a lack of oversight as to what was destroyed. Belding said that this went to the issue of the university not having a consistent way of storing records off site, records that might have been more easily managed in a central

records facility or an archival facility, where appropriate. The university had records stored in various locations. Department staff has encountered that before with other agencies and the Commission has, as well.

Belding said that Mr. Jacobs and others had suggested that there were individuals in the university who may have information about the chain of custody of the personnel records in question. Department staff discussed what would be an appropriate approach to dealing with those kinds of leads with the Attorney General's Office. After a good deal of discussion by the Office of the Attorney General, staff there recommended that the appropriate body to look into the matter further was the Fayette County Attorney. The Department has had similar situations to arise with another university. Staff has made reference to a body that has investigative power that can take depositions, something that the Department cannot do. If there is any chance at all that there are grounds for a criminal or civil case, that kind of activity should be handled by agencies that have investigative authority, such as the Office of Special Prosecutions, in the Attorney General's Office, or the Department of State Police.

Dr. Clark said that he was concerned about some of the issues raised. The Commission and the Department should proceed with caution, Clark said. Clark said that there have been several conversations with the university over time and that the Department and Commission had not been remiss in its actions. The discussions at the time were not necessarily about the specific issues raised in the memorandum, but about the records that are included in them. Belding agreed. Clark said that the former president's tenure was a matter of some dissatisfaction for some individuals in the university. There was also a great conflict, Clark said, between the Governor and the former president over the community college situation.

Dr. Clark suggested that Nelson arrange a meeting with President Todd to make him aware of the issues raised by Jacobs. Nelson interjected and said that he had communicated with President Todd suggesting that he could meet with him to discuss the issues related to the memorandum, as well as other general records issues. This would be a good time to do that, as President Todd is in the process of setting up a new administration. Nelson also said he had talked with Paul Willis, who is the Records Officer for the university, to let him know that he would be in contact with President Todd.

Nelson said he believed that some of the issues raised by Jacobs could be dealt with in a positive and progressive way by looking at the former structure of the Advisory Committee on University Records and reactivating it. There are still some questions about how best to deal with Board of Trustees records, for instance, and the Committee could assist the Department and the Commission in providing guidance to the universities in this area and others, and in referring questions involving legal interpretation to the Office of the Attorney General. Also, the State University Model schedule can be reviewed to see if additional clarity or definition of certain records is needed, or if additional language is needed to help university personnel understand that the model schedule applies across the board to all university offices. Nelson said that some of the issues raised are systemic, as they extend beyond the University of Kentucky. Dr. Morison, who is Records Officer for the University of Louisville, as well as a member of the Commission, agreed.

Belding said that the first three issues covered in Jacobs' memorandum, dealing with documentation of Boards of Trustees, or Regents, what they may or may not be creating and whether they should be creating documentation, and the documentation issue associated with performance evaluation issues related to a president all revolve to a considerable extent around the way in which KRS 164.150 and KRS 45A.335 are interpreted, with respect to the recordkeeping responsibilities of these bodies as entities and the members of them as individuals. This would extend to both those who are public members by virtue of their position as faculty or staff members, as well as to those private citizens who serve by virtue of having been appointed by the Governor. Belding said that the Board is the senior policymaking body for a university or has a considerable role in that area, and is a public agency in every sense of the phrase. Nelson said the Department still wants to get the status of Boards of Trustees/Regents clarified before moving ahead on recommendations in this area.

In regard to President Todd's administration, Nelson said the Department's approach would be to encourage the development of a quality records management program, which would help to prevent problems in program administration such as those raised in the memorandum. Clark said it is important for the university to institute a well-ordered, well-administered archival system. Nelson said that the university had made tremendous gains over the past several years in the management of its records and that there are many positive things going on on campus, but that there was always room for improvement.

As chairman, Nelson recommended that the Commission direct the Department to re-create the Advisory Committee on University Records as a means of seeking advice and assistance in dealing with some of the issues that had been raised. Nelson said that he would meet with President Todd as soon as a meeting could be scheduled to apprise him of the issues. Nelson said that he is confident that Todd would be open to the meeting and that on many occasions since becoming president he had said that he wants the university to have a more positive, transparent and engaging role statewide. The university could be the model for what is needed to have a quality records management program. Nelson said that if the Commission were in agreement, the Department would proceed with scheduling a meeting with President Todd, re-creating the Advisory Committee on University Records and convening a meeting of its members, and reviewing the State University Model Records Retention Schedule to determine what changes might be needed to better clarify and identify specific series, and that Nelson would forward a letter to Mr. Jacobs advising him that the issues would be reviewed on a system-wide basis.

Belding said that some of the issues that were raised by Jacobs relate to a section of the Archives and Records Act, KRS 171.640, which deals with the requirement of agencies to create adequate documentation of their essential activities, transactions and policies. Such documentation aids in understanding decisions that are made that affect the administration of agencies and the delivery of services, and that shed light on the main activities they carry out and the policies they adopt. Belding believed the author was suggesting in several cases that the university could take that documentation role more seriously.

Morison said that he was supportive of the direction Nelson described, that is, examining the current model schedule and considering appropriate additions, which is consistent with the earlier work of the Advisory Committee on University Records and the basis for the origin of the model schedule. It would also be appropriate to look closely at issues with respect to records surrounding the Boards of Trustees/Regents at the public universities, among other areas, Morison said. While this particular issue described in the memorandum concerns events at the University of Kentucky, Morison believed that more broadly speaking, regardless of any "flag ship" status of the university, the issue(s) impinged upon all of Kentucky's public universities. Whatever solutions the Department and Commission come to, should not be directed solely at the University of Kentucky or at any other one of the universities, nor should the solutions be tailored to one specific campus. The solutions should be broadly applied to all the universities.

Nelson called for a motion. Morison moved that the Commission accept Nelson's recommendation noted above to re-create the Advisory Committee on University Records and call on it to meet and review the current model university schedule for clarification of language and identification of new or expanded series, as well as for the Chairman to arrange a meeting with President Todd and to issue a letter to Mr. Jacobs advising him of the Commission's approach to deal with the issues on a system-wide basis. Dr. Clark seconded the motion. All members present and represented voted unanimously to approve the motion.

Chairman Nelson adjourned the meeting at 12:00 p.m.

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