

# MAINE STATE LEGISLATURE

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AUGUSTA, MAINE 04333

April 7, 1978

To: Leighton Cooney, State Treasurer

From: Kate Clark Flora, Assistant Attorney General

This responds to your request for an opinion concerning the length of time necessary to retain actual cancelled State checks in addition to microfilm records. I am assuming that a microfilm record of all such checks exists. Except for the considerations discussed below, I find no requirement that the checks be kept for any specified period of time. Therefore, it is my opinion that the decision as to the period of time during which the actual physical check should be kept in addition to the microfilm record of that check, lies within your discretion. I hope that the following discussion is helpful.

According to your opinion request, at the present time the actual checks are kept for 20 years in order that the original would be available if it were requested by a court official. You attached to your opinion request a copy of Title 16 M.R.S.A. §§ 454 - 456. Section 454 provides that:

Copies made by photographic process from public records shall be received as evidence in the courts of this state under existing laws if duly attested by the officials required by law to keep said records.

Section 456 provides, in pertinent part, that a microfilm or photostatic record of a government record shall be admissible in evidence as the original itself whether or not the original is in existence. (emphasis supplied). Rule 1002 of the Maine Rules of Evidence provides:

To prove the content of a writing, record, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.

The notes which accompany that rule indicate that the exception for statutory provisions was intended for just such a situation as is provided in § 454 and § 456, that is, for the case where there is an official record which has been recorded on microfilm. Therefore, although you may encounter situations in which the court requests the original, the statutes and rules of evidence provide that a microfilm copy is admissible and there is no necessity for producing the original.

There would therefore appear to be no necessity for keeping the original copies of state checks to provide against the rare occasion when a copy of the check might be called for as evidence. Thus there is no necessity for keeping the originals of checks for 20 years, to provide for their availability in cases in which there is a 20 year state of limitations.

There are three situations, however, in which you might wish to have the originals of state checks rather than microfilm copies. These situations are:

- 1) those in which a question of unauthorized signature or alteration may be alleged under the Uniform Commercial Code;
- 2) those in which an unauthorized endorsement may be alleged under the Uniform Commercial Code; and
- 3) those in which a question of forgery arises under the Maine Criminal Code.

Title 11 M.R.S.A. § 4-406(4) provides that a bank's customer has one year in which to discover an unauthorized signature or alteration on a check, and three years to discover and report any unauthorized endorsement. In both the situation of the unauthorized signature or alteration and the unauthorized endorsement, it is often very difficult to determine from a microfilm reproduction, whether or not the signature is genuine. Therefore, in order to protect the State's ability to sue in these cases you might wish to adopt a policy of keeping the original checks three years in order to provide protection under the Uniform Commercial Code. Similarly, under the Criminal Code §§ 701 - 703, which deal with forgery, the original instrument may be essential in proving a forgery. Under the criminal code, the Statute of Limitations on forgery varies from 3 to 6 years depending on the nature of the offense.

With the exception of the sections discussed above, I can find no provisions of the law which are directly applicable to the question of how long the original copies of State checks should be retained. I therefore conclude that the decision as to what policy you wish to establish with regard to the retention of these original checks lies within your discretion in consultation with the Maine State Archivist in accordance with the provisions of Title 5 M.R.S.A. § 91 et seq.

If I can be of further assistance to you, please do not hesitate to call on me.

  
KATE CLARK FLORA  
Assistant Attorney General

KCF:jg

cc: Sam Silsby, State Archivist