

# MAINE STATE LEGISLATURE

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Probate Records  
18 MAR 1978

JOSEPH E. BRENNAN  
ATTORNEY GENERAL



RICHARD S. COHEN  
JOHN M. R. PATERSON  
DONALD G. ALEXANDER  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

June 8, 1978

Francis R. Mulkern  
Register of Probate  
Cumberland County  
Portland, Maine

Dear Mr. Mulkern:

Attorney General Joseph E. Brennan has asked me to respond to your letter of April 4, 1978. By that letter you asked for legal advice on possible changes in probate records to permit use of microfiche as a substitute for regular paper records. Your questions were as follows:

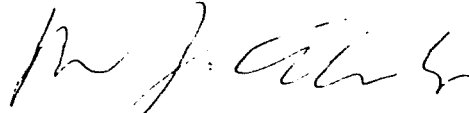
1. Would microfiche be considered a legal document without a statutory change?
2. Would the storing of probate records at another government facility be accepted as still being in the care and custody of the Register of Probate?

Documents filed with Maine Registries of Probate are frequently the subject of disputes which result in court actions in Maine and elsewhere. When documents are subject of such disputes, issues may arise as to the authenticity of the document itself or authenticity of signatures thereon. Such matters would be difficult to prove and resolve if only microfiche copies of such documents were available. Further, there may be some courts which would not accept as evidence copies of documents reproduced from microfiche. Accordingly, we could not, at this time, recommend substitution of microfiche for retaining paper originals. We believe that a statutory change would be necessary to accomplish this purpose. We further believe that even if such a statutory change occurred, there may be serious practical problems with use of microfiche.

In response to your second question, we would advise that storing probate records at another government facility would be acceptable if proper security arrangements were provided to assure that, in reality, such documents were within the effective control of the Register of Probate. We do not believe that placing such documents in another facility would be inconsistent with the requirements of 18 M.R.S.A. § 253, as that section does not specify the location of documents, but only that they must be within the care and custody of the Register of Probate. Such care and custody could be accomplished in another facility.

I hope this information is helpful.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. G. Alexander". The signature is fluid and cursive, written over a light background.

DONALD G. ALEXANDER  
Deputy Attorney General

DGA/ec

cc: Henry Berry, District Attorney