

CHAPTER 18.

CUSTODY OF OFFICIAL PROPERTY AND PROCEEDINGS TO COMPEL THE DELIVERY THEREOF BY PUBLIC OFFICERS TO THEIR SUCCESSORS.

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18.01 Custody and delivery of official property and records. (1) Each and every officer of the state, or of any county, town, city, village, school district, or other municipality or district, is the legal custodian of and shall safely keep and preserve all property and things received from his predecessor or other persons and required by law to be filed, deposited, or kept in his office, or which are in the lawful possession or control of himself or his deputies, or to the possession or control of which he or they may be lawfully entitled, as such officers.

(2) Except as expressly provided otherwise, any person may with proper care, during office hours and subject to such orders or regulations as the custodian thereof may prescribe, examine or copy any of the property or things mentioned in subsection (1).

(3) Upon the expiration of his term of office, or whenever his office becomes vacant, each such officer, or on his death his legal representative, shall on demand deliver to his successor all such property and things then in his custody, and his successor shall receipt therefor to said officer, who shall file said receipt, as the case may be, in the office of the secretary of state, county clerk, town clerk, city clerk, village clerk, school district clerk, or clerk or other secretarial officer of the municipality or district, respectively; but if a vacancy occurs before such successor is qualified, such property and things shall be delivered to and be receipted for by such secretary or clerk, respectively, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

(4) Any person who violates any of the provisions of this section shall, in addition to any other liability or penalty, civil or criminal, forfeit not less than twenty-five nor more than two thousand dollars; such forfeiture to be enforced by a civil action on behalf of, and the proceeds to be paid into the treasury of the state, municipality, or district, as the case may be.

Note: Health records of public school pupils and consents to vaccination and immunization are not public records and matter of their preservation is one of policy. 27 Atty. Gen. 255.

18.02 Proceedings to compel the delivery of official property. (1) If any public officer refuses or neglects to deliver to his successor any official property or things as required in section 18.01, or if such property or things shall come to the hands of any other person who refuses or neglects, on demand, to deliver the same to the successor in such office, such successor may make complaint thereof to any judge of a court of record for the circuit or county where the person so refusing or neglecting resides. If such judge be satisfied by the oath of the complainant and such other testimony as may be offered that any such property or things are withheld he shall grant an order directing the person so refusing to show cause before him, within some short and reasonable time, why he should not be compelled to deliver the same.

(2) At the time appointed, or at any other time to which the matter may be adjourned, upon due proof of service of such order, if the person complained against makes affidavit before such judge that he has delivered to such successor all the official property and things in his custody or possession pertaining to such office, within his knowledge, the person complained against shall be discharged and all further proceedings in the matter before such judge shall cease.

(3) If the person complained against does not make such affidavit the matter shall proceed as follows:

(a) The judge shall inquire further into the matters set forth in the complaint, and if it appears that any such property or things are withheld by the person complained against the judge shall by warrant commit him to the county jail, there to remain until the delivery of such property and things to the complainant or until he be otherwise discharged according to law.

(b) If required by the complainant the judge shall also issue his warrant, directed to the sheriff or any constable of the county, commanding him in the daytime to search

such places as shall be designated in such warrant for such official property and things as were in the custody of the officer whose term of office expired or whose office became vacant, or of which he was the legal custodian, and seize and bring them before the judge issuing such warrant.

(c) When any such property or things are brought before the judge by virtue of such warrant, he shall inquire whether the same pertain to such office, and if it thereupon appears that they pertain thereto he shall order their delivery to the complainant.

18.03 Transfer of records to state historical society. Any public records, in any state office, that are not required for current use may, in the discretion of the custodian thereof, be transferred into the custody of the state historical society, as provided in section 44.08 of the statutes.