



Wisconsin's Earliest Public Records Laws

Prepared by: Peter Weber, Legal Intern, and Melissa Schmidt, Principal Attorney

Wisconsin has a long history of recognizing public records principles. The state's first statutes, compiled in 1849,¹ treated the official papers of many public offices as belonging to the office rather than the particular officer. Those statutes also provided a public right to access some offices' governmental documents. The state's commitment to public records eventually led to a single, unified Wisconsin public records statute in 1917.² This issue brief discusses certain public records provisions from the state's 1849 revised statutes and two early Wisconsin Supreme Court decisions from the late 1800s interpreting the public's right to access governmental records.

1849 REVISED STATUTES PUBLIC RECORDS REQUIREMENTS

Public Offices' Records Treated as Belonging to the Office, not the Officer

The revised statutes of 1849 required many public officers to provide to their successors documents related to their respective offices. These requirements, listed in the table below, demonstrate how certain official papers were treated not as the personal papers of a particular public officer, but rather as records of that office to be retained for future governmental purposes.

The revised statutes also provided an enforcement mechanism for successors to obtain official papers. If a public officer refused or neglected to deliver official papers to their successor, the successor could file a complaint in court. It was a misdemeanor to not deliver papers to one's successor.³

Public Right to Inspect Certain Documents

In addition to providing records to their successors, at least eight categories of public officers were required to make papers belonging to their respective offices available for public inspection. Some of the revised statutes of 1849 also specified that the public could not be charged a fee to access public documents.⁴ Public inspection provisions are bolded in the table below. The public's right to access official documents is now a key aspect of Wisconsin's Public Records Law.⁵

LATE 1800S PUBLIC RECORDS CASE LAW

Two early Wisconsin Supreme Court cases further illustrate the nature of Wisconsin's early public records laws. First, in *County of Jefferson v. Besley*, [5 Wis. 134 \(1856\)](#), the Court held that because the statutes obligated a circuit court clerk to keep his office open for the public to inspect books and papers, the county board was required to pay for candles and heating firewood to keep the office in a "proper condition to accommodate the wants of the citizens."⁶

Second, in *Hanson v. Eichstaedt*, [69 Wis. 538 \(1887\)](#), the Court declined to follow the common law doctrine limiting public records inspection to those with an "interest in the particular record."⁷ Based on the plain meaning of Wisconsin's statutes, the Court held that any person could inspect public records.

PUBLIC RECORDS PROVISIONS IN THE REVISED STATUTES OF 1849

The following table lists 1849 revised statutes provisions identified by the Legislative Council relating to either: (1) a public officer's obligation to provide to their successor; or (2) the public's right to inspect books, documents, papers, or records.⁸

Chapter, Section(s)	Officer(s)	Summary
Ch. 9 SEC. 9	Secretary of State	The secretary shall give their successor “all moneys, books, records, deeds, bonds, documents, maps, papers and other articles and effects belonging or appertaining to his said office.”
Ch. 9 SECS. 27, 29 (6)	State Treasurer	SEC. 27: The state treasurer shall give their successor “all moneys, books, records, papers, and other articles and effects belonging to his said office.” SEC. 29 (6) contains a similar requirement.
Ch. 9 SEC. 41	Attorney General	The Attorney General shall keep and give to successor “in proper books, to be provided for that purpose at the expense of the state, a register of all actions and demands prosecuted or defended by him in behalf of this state, and of all proceedings had in relation thereto.”
Ch. 10 SECS. 37, 44	County Board of Supervisors and Board Clerk	SEC. 37: The “books, records, and accounts” of a county board of supervisors shall be deposited with the board's clerk and “ shall be open, without any charge, to the examination of all persons. ” SEC. 44: The clerk shall give their successor “all the books, records, papers, and other things belonging to his said office.”
Ch. 10 SEC. 54	Clerk, Circuit Court	The clerk of a circuit court shall give their successor “all the books, records, papers, and other things belonging to his said office.”
Ch. 10 SECS. 77, 86	County Sheriff	SEC. 77: A county sheriff shall give their successor “all writs, papers and other things pertaining to his office which may be so required by law.” SEC. 86: A similar requirement, with the jail, county property, and prisoners added to the list.
Ch. 10 SECS. 104, 112	County Treasurer	SEC. 104: A county treasurer shall give their successor “all moneys, books, papers, and other things appertaining or belonging to his said office.” A similar provision exists in SEC. 112.
Ch. 10 SEC. 118	County Register of Deeds	A county register of deeds shall give their successor “all books, records, maps, deeds, mortgages, papers, and other things belonging to his said office.”
Ch. 10 SEC. 137	Previous Four Rows	Regarding county sheriffs, county registers of deeds, county treasurers, and clerks of circuit courts: “ All books and papers required to be kept in their offices, shall be open for the examination of any person. ”
Ch. 10 SEC. 130	County Surveyor	A county surveyor shall keep a “correct and fair record of all surveys” in a book provided by county supervisors and shall give the book to their successor. A copy of each survey and plot shall be given to “any person requiring” it.
Ch. 12 SEC. 74	Clerk, Town Board	The clerk of a town board shall keep a true record of all proceedings and “shall file in his office all accounts audited by the town board, and preserve the same for the inspection of any of the inhabitants of the town. ”
Ch. 12 SEC. 77	Town Treasurer	A town treasurer shall “keep a true account of all money by him received by virtue of his office, and the manner in which the same is disbursed, in a book to be provided at the expense of the town” and deliver this record to their successor.
Ch. 24 SEC. 103	Commissioners of School and University Lands	The commissioners of school and university lands shall “at all business hours be open, in the presence of one of the commissioners, to the inspection of every person, free of charge ” of “all records, book, reports, surveys, maps and plats kept by the said commissioners.”
Ch. 52 SEC. 64	Clerk, Village	A village clerk shall have custody of, and give to their successor, “all the records, books, and papers [of the Village].”
Ch. 123 SECS. 1-9	General Enforcement Provision	This chapter requires an officer to give their successor “the books and papers in his custody as such officer, or in any way appertaining to his office.” Failure to do so is a misdemeanor. This chapter also provides for enforcement by filing a complaint in court and establishes procedures to resolve the complaint.

Source: Revised Statutes of Wisconsin, 1849.

- ¹ Wisconsin was admitted to the Union as a state in 1848. The 1849 Revised Statutes compiled all pre-existing laws of the Territory of Wisconsin which did not conflict with the State Constitution and all laws passed by the state Legislature since its admission as a state. [Wisconsin State Law Library, [Continuous Revision of Wisconsin Statutes: a History](#), (Aug. 2019).]
- ² s. 18.01, 1917 Stats. For the current version of this statute, see [s. 19.21](#), Stats.
- ³ ss. 1 and 2, ch. 123, Rev. Stats. 1849.
- ⁴ s. 37, ch. 10, Rev. Stats. 1849.
- ⁵ Current Wisconsin public records laws “shall be construed . . . with a presumption of complete public access.” [[s. 19.31](#), Stats.]
- ⁶ 5 Wis. 134. at 136.
- ⁷ 69 Wis. 538 at 541.
- ⁸ This table excludes provisions related to other categories of items such as the public’s right to inspect “all deeds, conveyances, leases, bonds, mortgages, and other securities for money” which belonged to the public. [s. 11, ch. 9, Rev. Stats. 1849.]