CHAPTER 18

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

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 sub. (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 this section shall, in addition to any other liability or penalty, civil or criminal, forfeit not less than $25 nor more than $2,000; 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.

(5) (a) Any city council or village board may provide by ordinance for the destruction of obsolete public records. Prior to any such destruction at least 60 days' notice in writing of such destruction shall be given the state historical society which shall preserve any such records it determines to be of historical interest; provided that the state historical society may, upon application, waive such notice.

(b) The period of time any city or village public record shall be kept before destruction shall be as prescribed by ordinance unless a specific period of time is provided by statute. The period prescribed in such ordinance shall be not less than 2 years with respect to water stubs, receipts of current billings and customer's ledgers of any municipal utility, and 7 years for other records unless a shorter period has been fixed by the committee on public records pursuant to s. 16.80 (3) (e).

(c) Any city council or village board may also provide by ordinance for the keeping and preservation of public records by the use of microfilm or other reproductive device. Any photographic reproduction shall be deemed an original record for all purposes if it meets the standards established in s. 16.80 (7), so far as the same may be applicable.

(6) Counties having a population of 500,000 or more may provide by ordinance for the destruction of obsolete public records without regard to ss. 59.715 to 59.717 and may undertake a management of records service. The period of time any public record shall be kept before destruction shall be determined by ordinance except that the specific period of time expressed within s. 59.715 shall apply as to those records or documents. Prior to any destruction of records, except those specified within s. 59.715 as well as those having a confidential character as determined by the county, at least 60 days' notice of such destruction shall be given in writing, to the state historical society, which may preserve any such records it determines to be of historical interest; however no notice need be given for any of the aforesaid class of records for which destruction has previously been ap-

proved by the state historical society or in which it has indicated that it has no interest for historical purposes. The county board may also provide, by ordinance, a program for the keeping, preservation, retention and disposition of public records including the establishment of a committee on public records and may institute a record management service for the county and may appropriate funds to accomplish such purposes.

History: 1961 c. 567; 1963 c. 234, 397; 1965 [13.93 (1) (e)].

A report of an investigation of the police department by the city attorney in the hands of the mayor could be kept confidential if the harmful effect of publication on the public interest outweighs the benefit to be gained. The decision is to be made by the person having the documents and, if action is brought, reviewed by the court in camera. State ex rel. Youmans v. Owens, 28 W (2d) 672, 137 NW (2d) 470, 139 NW (2d) 241.

Traffic citations are public records in the custody of the chief of police and unless the chief gives valid reasons for denying inspection, a writ of mandamus should issue as a matter of course. Beckon v. Emery, 36 W (2d) 510, 153 NW (2d) 501.

See note to 346.73, citing 52 Atty. Gen. 242.

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 s. 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 or materials to state historical society. (1) Any public records, in any state office, that are not required for current use may, in the discretion of the committee on public records, be transferred into the custody of the state historical society, as provided in s. 16.80.

(2) The proper officer of any county, city, village, town, school district or other local governmental unit, may under s. 44.09 offer title and transfer custody to the state historical society of any records deemed by the society to be of permanent historical importance.

(3) The proper officer of any court may, on order of the judge of that court, transfer to the state historical society title to such court records as have been photographed or microphotographed or which have been on file for at least 75 years, and which are deemed by the society to be of permanent historical value.

(4) Any other articles or materials which are of historic value and are not required for current use may, in the discretion of the department or agency where such articles or materials are located, be transferred into the custody of the state historical society as trustee for the state, and shall thereupon become part of the permanent collections of said society.

History: 1965 [13.93 (1) (d)].

18.04 Refusal to deliver money, etc., to successor. Any public officer whatever, in this state, who shall, at the expiration of his

term of office, refuse or wilfully neglect to deliver, on demand, to his successor in office, after such successor shall have been duly qualified and be entitled to said office according to law, all moneys, records, books, papers or other property belonging to said office and in his hands or under his control by virtue thereof, shall be imprisoned not more than 6 months or fined not more than $100.

History: 1965 [13.93 (1) (1)].