
STATE ARCHIVES**BUDGETARY ADMINISTRATION — REVENUES — DISCRETION OF
STATE ARCHIVIST TO DETERMINE CONTENT AND FORMAT
OF *ARCHIVES OF MARYLAND* SERIES**

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You have requested our opinion whether the State Archivist may determine, with the advice and concurrence of the Hall of Records Commission, the format and content of a publication known as the *Archives of Maryland*. We understand that your question relates to an issue raised by the Legislative Auditor as to how revenues derived from the publications of the State Archives should be allocated between a special fund called the State Archives Fund and the “consolidated publications account,” in which amounts above \$50,000 annually revert to the State’s general fund.

We conclude that the State Archivist has discretion to determine the content of future installments of the *Archives of Maryland* series, but that this discretion is not absolute. The *Archives of Maryland* series should contain public records of Maryland such as court records, legislative proceedings, gubernatorial correspondence, convention journals, military proceedings, and papers of public officials that the State Archivist deems to be of historical value and worthy of publication.

The manner or format in which the Archivist chooses to publish the records is within the discretion of the Archivist. Thus, the *Archives of Maryland* series may be published on microfilm, on compact disk, or on the Internet as well as in the traditional printed form.

Finally, the proceeds of the sale of the *Archives of Maryland*, in whatever format published, are to be placed in the State Archives Fund. Proceeds of other publications and services of the State Archives must be placed in the consolidated publications fund.

I

Background

A. *The State Archives*

The State Archives is an independent agency in the executive branch of State government that serves as the central repository for government records of permanent value. Annotated Code of Maryland, State Government Article (“SG”), §9-1001 *et seq.* The State Archives is responsible for collecting both public and private records relating to the history of the State, editing and publishing those records, and encouraging and supporting historical research. SG §9-1010.

The agency is headed by the State Archivist, who is appointed by the Governor with the advice of the Hall of Records Commission (the “Commission”). SG §9-1005. The Commission, which is composed of various State and academic officials, advises the State Archives concerning its budget, publications, and policies. SG §9-1004. The State Archivist is authorized to adopt regulations¹ to govern the State Archives and may determine, in consultation with the Commission, the types of records and other information that the Archives will accept for safekeeping. SG §§9-1007, 9-1008.

B. *The Archives of Maryland Series*

The *Archives of Maryland* series is not defined or described in any detail in the statute or regulations governing the State Archives. The only statutory reference to the series appears in the provision that sets forth the composition and disposition of a special fund known as the State Archives Fund:

(b) The Comptroller shall credit to the State Archives Fund any money that:

¹ The State Archivist has promulgated regulations governing record retention schedules, local government archives, and the preservation of electronic and microfilm records. COMAR 14.18. None of the regulations specifically pertains to the *Archives of Maryland* series.

(1) is appropriated or given to the Archives for publication of the series known as “The Archives of Maryland”;

(2) is received from the sale of the series; or

(3) is received from public grants and private contributions.

* * *

(d)(1) The Archives shall use money received by the State Archives Fund for “the Archives of Maryland” to prepare, edit, and publish volumes of the series, including reprints of unavailable volumes.

(2) The Archives may use other money in the Fund for the general dissemination of archival materials. This includes the preparation and distribution of books and other publications using archival materials.

SG §9-1013(b), (d)(1)-(2). The statute also provides for a “consolidated publications account” separate from the State Archives Fund for revenues generated by publications and services of the State Archives. SG §9-1014. The funds in the consolidated publications account are to be used to support the publications of the State Archives, but, unlike the State Archives Fund, any funds in the account in excess of \$50,000 revert to the State’s general fund at the end of the fiscal year.²

² The statute describes the consolidated publications account as follows:

(a) The Archives may establish a consolidated publications account.

(continued...)

Originally, the *Archives of Maryland* consisted of a series of volumes printed on paper. In recent years, the State Archives has published archival materials in other media — e.g., microfilm, compact disks, the Internet. The income from the sale of these versions of archival materials has been deposited to the State Archives Fund as income from the *Archives of Maryland* series. The Hall of Records Commission has passed a resolution that offered an expansive definition of the *Archives of Maryland* series that encompassed all copies of documents, finding aids, and interpretive materials regardless of format.³

² (...continued)

(b) The Archives may place in the consolidated publications account revenues from publications, the issuance of land patents, and services of the Archives. However, at the end of each fiscal year, the money in the account in excess of \$50,000 shall revert to the General Fund of the State.

(c) The Archives may use the consolidated publications account to produce, distribute, and promote any of the publications of the Archives, except the Maryland Manual.

SG §9-1014.

³ The resolution states:

It is hereby resolved that all copies of documents in whatever form they are produced, as well as all finding aids in whatever form they are produced, as well as any interpretive booklets, pamphlets, and other materials in whatever form produced, by the State Archives or for the State Archives, are considered to be publications in the *Archives of Maryland* series, and that any income received from those copies, finding aids, interpretive booklets, pamphlets, and other materials should be deposited to the Archives of Maryland funding account.

Minutes of Hall of Records Commission (March 19, 1998).

C. *Legislative Audit*

During the most recent audit of the State Archives, the Legislative Auditor made a finding that the State Archives had improperly credited revenues from all of its publications and other services to the State Archives Fund, the special fund for proceeds from sales of the *Archives of Maryland* series. The Auditor believed that a significant portion of that revenue should have been credited instead to the consolidated publications account. As you correctly note, the issue that the Auditor has raised turns upon the definition of items for which proceeds should be deposited in the State Archives Fund. Thus, you seek our opinion on the appropriate content and format of the *Archives of Maryland* series.

II

Analysis

A. *Legislative History*

To answer the questions that you have posed we must delve into the history of the State Archives and the *Archives of Maryland* series.

1. 1882 – Designation of Maryland Historical Society to Publish Series

In 1882, the General Assembly designated the Maryland Historical Society as the custodian of “all the records, archives and ancient documents of the province and State of Maryland of any date prior to the acknowledgment of the independence of the United States by Great Britain.” Chapter 138, §1, Laws of Maryland 1882. The Historical Society was authorized to arrange and catalog the records, and to edit and publish those of historical importance. *Id.* The statute also appropriated funds to the Historical Society for a “publication fund” to support the arrangement, editing, and publication of those documents, “as well as other documents pertaining to the history of Maryland.” *Id.* §2. Publications were to be sold at cost and the proceeds from those sales were to be placed in the publication fund. *Id.* The legislation did not specify a title for these publications.

2. Early 1900’s – Appropriations for *Archives of Maryland* Series

In subsequent years, the General Assembly appropriated additional funds to support the publication of documents by the Historical Society. The proceeds of all sales were to be added to the publication fund and used only for the publication of those documents. *See, e.g.*, Chapter 15, Laws of Maryland 1912; Chapter 57, Laws of Maryland 1914. The 1912 statute first referred to these documents simply as the “archives of Maryland.” Subsequent enactments variously referred to the documents to be published as “archives of Maryland” and “the Archives of the State of Maryland.” *See, e.g.*, Chapter 57, §2, Laws of Maryland 1914; Chapter 223, §1, ¶116, Laws of Maryland 1916. Despite some variation in the label attached to the series, each of those laws referred back to the original 1882 law.

3. 1930’s – Creation of Hall of Records Commission

In 1931, as part of the commemoration of the 300th anniversary of the founding of Maryland, the General Assembly established the Hall of Records in Annapolis to house historic public documents. Chapter 487, Laws of Maryland 1931; *see Magruder v. Hall of Records Commission*, 221 Md. 1, 3, 155 A.2d 899 (1959). Four years later, the General Assembly created the Hall of Records Commission and gave the Commission responsibility for the collection, preservation, and publication of public documents and historical materials. All papers, records, relics, and other materials not required for the operation of a public office or agency were to belong to the Commission. State and local officials were directed to turn over official papers to the Commission. Chapter 18, Laws of Maryland 1935. The Commission was authorized to appoint an Archivist to assume the active management of the records, documents and archives. *Id.*

Even after the Commission had been established, however, publication of the *Archives of Maryland* remained the responsibility of the Maryland Historical Society, and the Legislature continued to appropriate funds to the Historical Society for that purpose. *See* Chapter 119, Preamble, Laws of Maryland 1981; Chapter 598, §1, Laws of Maryland 1961. Between 1882 and 1972, the Maryland Historical Society published 72 printed volumes in the *Archives of Maryland* series.

4. 1979 – Establishment of Consolidated Publications Account

In 1979, the General Assembly authorized the Commission to establish a special fund called the “consolidated publications account” for revenues derived from the publications and services of the Commission. The legislation provided for such revenues to remain in the account up to a specified maximum with the excess funds reverting to the General Fund at the end of the fiscal year. Chapter 107, Laws of Maryland 1979. In testimony in support of this legislation, the State Archivist stated that the fund was needed to allow a more flexible production schedule for publications that could not be planned and produced within a single fiscal year. The Archivist offered some examples of Commission publications that would generate revenue for the fund, including microfilm sales and a publication entitled *Maryland: A New Guide to the Old Line State*. It was anticipated that the revenues from these and other items would support the annual publication by the Commission of three to five books, as well as packets of historical documents for use in schools. Statement of Edward C. Papenfuse before the House Committee on Constitutional and Administrative Law concerning SB 292 (March 28, 1979).

5. 1981 – Transfer of *Archives of Maryland* to Hall of Records Commission

In 1980, following eight years without publication of a new volume in the series, the Historical Society sought to relinquish its responsibility for publication of the *Archives of Maryland*. As a result, the General Assembly authorized the Hall of Records Commission to receive the inventory of the *Archives of Maryland* and related funds from the Historical Society. Chapter 119, Laws of Maryland 1981, *codified at* Former Article 54, §3(c)(1). The Hall of Records Commission assumed responsibility for preparing, editing and publishing future volumes of the *Archives of Maryland* series, reprinting unavailable volumes, and receiving proceeds from the sale of the series. *Id.* The funds received from the Historical Society were placed in a new special fund designated as the “Archives Fund.” *Id.*

The sponsor of the bill that transferred responsibility for publishing the *Archives of Maryland* from the Historical Society to the State described the series as follows:

The *Archives of Maryland* is a distinguished series of books published intermittently since 1882 that contains printed text of seventeenth, eighteenth, and early nineteenth century records. In their original state these records are either exceptionally hard to read or so rare as to be very difficult to find. Included in the seventy-two volumes published so far are all the extant proceedings of the General Assembly from 1637 to the American Revolution, the earliest Court Records of Maryland, indexed Maryland military records relating to the Revolution, and the correspondence of colonial governor Horatio Sharpe.... The series has traditionally been devoted to the public records of Maryland or to the papers of eighteenth century public officials, most of which are now housed in the Hall of Records.

Statement of State Senator Julian L. Lapides concerning SB 566 (1981). Senator Lapides stated that the next volume of the *Archives of Maryland* would be a guide to the microfilm edition of the papers of Charles Carroll of Carrollton. A fiscal note for the bill indicates that the Hall of Records Commission projected that a new volume of the series would be published every two to three years. Revised Fiscal Note for SB 566 (March 19, 1981).

The General Assembly placed the same restrictions on the contents and use of monies in the new Archives Fund that it had placed on the publication fund originally appropriated for the Historical Society. Specifically, the monies deposited in the Archives Fund were to be the proceeds of sales of the *Archives of Maryland* and any legislative appropriations to support the series. Chapter 119, Laws of Maryland 1981. There was no provision for

revenues derived from any other publications or services provided by the Commission to be deposited in the Archives Fund.

Thus, the Commission now had charge of two funds: (1) a consolidated publications account for revenues from its general publications and services; and (2) the Archives Fund for appropriations and revenues related to the *Archives of Maryland* series.

6. 1984 – Creation of The State Archives

In 1984, the State Archives was created as an independent State agency within the Office of the Governor. The State Archivist became responsible for managing the Hall of Records building and other real and personal property that the Archives acquires, adopting regulations to govern the Archives, and preserving and publishing public documents and historical materials. The Archivist thus assumed many of the responsibilities of the Hall of Records Commission, which became an advisory body. Chapter 286, Laws of Maryland 1984.⁴ Both funds for deposit of publication revenues were transferred to the new agency and the “Archives Fund” was renamed the “State Archives Fund.”

7. 1993 – Modification of State Archives Fund

In 1993, the Legislature authorized the State Archives Fund to receive funds from grants and private donations, as well as State budget appropriations and sales proceeds of the *Archives of Maryland* series. The legislation also allowed the Archives to spend money from the Fund for “general dissemination of archival materials,” apparently in addition to publication of the *Archives of Maryland* series. Chapter 81, Laws of Maryland 1993. However, it did not direct that proceeds of sales of general publications or services be placed in the Fund.

⁴ The same law also repealed former Article 54 and transferred provisions concerning the State Archives to their present location in the State Government Article. Chapter 286, Laws of Maryland 1984, §§3, 5, 8.

The 1993 legislation also created an “Archives Endowment Account” within the State Archives Fund composed of any grants or private donations to the Fund. Earnings from the endowment could be used for research concerning prominent Maryland citizens, research concerning the history and geography of the State, and school outreach. *Id.*

B. Content, Format, and Revenues of the Archives of Maryland

1. Content of the Series

The most extensive statutory description of the *Archives of Maryland* series appears in the original 1882 act commissioning the Maryland Historical Society as publisher. According to that legislation, the series was to embrace “all the records, archives, and ancient documents of the province and State of Maryland of any date prior to the acknowledgment of the independence of the United States by Great Britain” with publication limited to those “of historical importance.” Chapter 138, §1, Laws of Maryland 1882. Subsequent bills appropriating funds to the Historical Society for that purpose omitted the chronological limitation to documents that preceded the Treaty of Paris. A century after the initiation of the series, the General Assembly approved a bill to transfer responsibility for its publication to the State after the sponsor of the bill described it as printed texts of primary source documents pertaining to the history of the State that were hard to read or difficult to find. *See* Statement of State Senator Julian L. Lapides concerning SB 566 (1981). As examples of such documents, Senator Lapides cited court records, legislative proceedings, gubernatorial correspondence, convention journals, military proceedings, and the papers of public officials from the seventeenth, eighteenth, and early nineteenth centuries. *Id.*⁵

⁵ The courts frequently rely upon an elaboration of a bill by its sponsor, particularly when consistent with the plain language of the text. *See, e.g., Fairbanks v. McCarter*, 330 Md. 39, 47, 622 A.2d 121 (1993); *Carolina Freight Carriers Corp v. Keane*, 311 Md. 335, 341, 534 A.2d 1337 (1988).

When the State assumed responsibility for the series, the General Assembly did not contemplate that the *Archives of Maryland* would be limited to the 72 extant volumes originally published between 1882 and 1972. The 1981 law authorizing the transfer of the Historical Society's publication fund to the new "Archives Fund" specifically designated those funds for the preparation, editing, and publication of "future volumes" of the series in addition to reprinting unavailable volumes. Moreover, Senator Lapides' testimony described the subject matter of the next volume of the series and the fiscal note projected publication of new volumes at intervals of two to three years.

It is also evident that the General Assembly did not contemplate that the *Archives of Maryland* series would encompass all publications or services of the State Archives. In particular, the statute refers to the use of moneys in the State Archives Fund "for the general dissemination of archival materials" and for the "preparation and distribution of books and other materials using archival materials" as a separate use of the Fund from support of the *Archives of Maryland* series itself. SG §9-1013(d). Moreover, the General Assembly retained the consolidated publications account for the deposit of monies from publications, land patents and services even after the transfer of the *Archives of Maryland* series to the Hall of Records Commission in 1981. SG §9-1014. A conclusion that all publications of the State Archives were part of the *Archives of Maryland* would render that provision superfluous. *See Popham v. State Farm Mutual Ins. Co.*, 333 Md. 136, 148, 634 A.2d 28 (1993) (statutes should be harmonized so that no part is rendered meaningless or superfluous). Notably, the last printed version of the Maryland Manual, itself a publication of the State Archives, lists the *Archives of Maryland* as one of several publications of the agency. 1996-97 Maryland Manual at p. 527.

The statutory language and the testimony before the Legislature thus demonstrate that the General Assembly conceived of the *Archives of Maryland* as an identifiable series of specific publications that would have future installments, but not simply as anything that might be published by the State Archives. In particular, the *Archives of Maryland* series should contain documents similar in subject matter to the original volumes that contained court records, legislative proceedings, gubernatorial

correspondence, convention journals, military proceedings, and papers of public officials.⁶

While the statutory language and legislative history provide some parameters for general subject matter of the series, the General Assembly has never dictated the precise content of the *Archives of Maryland*, other than to describe the series generally as consisting of public records of historical value. Presumably one of the reasons that the Legislature has required that the Archivist be a person “knowledgeable in subjects relevant to archival activities” and “with experience in archival or related fields,” SG §9-1005(a)(2), is to have a qualified person exercise professional judgment as to items worthy to be included in the series. In our opinion, within the broad parameters outlined above, the State Archivist, in consultation with the Commission, has discretion to determine the contents of future installments of the *Archives of Maryland* series.

2. Format of the Series

In a resolution providing that the *Archives of Maryland* series includes “all copies of documents *in whatever form they are produced*, as well as all finding aids in whatever form they are produced, as well as any interpretive booklets, pamphlets, and other materials *in whatever form produced...*,” the Hall of Records Commission has indicated its belief that the agency is not limited to publishing the series in printed form. Resolution of Hall of Records Commission (March 19, 1998)(emphasis added).⁷ Although the *Archives of Maryland* series has traditionally been published in the form of printed volumes and the statute refers to “future volumes”

⁶ For example, a future volume of the series might contain the papers of the Governor or oral arguments before the Court of Appeals of Maryland. However, a volume on Maryland sports memorabilia or the economic history of State unrelated to public records would not be an appropriate subject for the series.

⁷ Although the Commission’s resolution might be read to assert a definition of the *Archives of Maryland* series that encompasses all publications of the State Archives, we think it unlikely that the Commission intended to define the content of the series at odds with the apparent intent of the General Assembly – nor, indeed, would it have authority to do so. Accordingly, we construe the resolution simply as a statement about the permissible format of the series.

of the series, we do not believe that the General Assembly has prescribed a precise format for the preservation and publication of historical materials. In executing the responsibility to publish the series, the Archivist may take advantage of advances in technology and the availability of more cost-efficient and accessible forms of publication including microfilm, compact disks, and the Internet.

3. Distribution of Revenues of State Archives

In accordance with the statutory directive, any revenue from sales of printed volumes or other specifically identified installments of the *Archives of Maryland* in any format should be credited to the State Archives Fund. Funds generated by services and sales of other publications of the State Archives should be placed in the consolidated publications account. For example, a payment for a compact disk version of the complete *Archives of Maryland* series would be deposited in the State Archives Fund. On the other hand, if the State Archives charges a fee for retrieving and copying a map of colonial Maryland, the payment received from that service should be deposited in the consolidated publications account. Likewise, if the State Archives publishes reprints of colonial newspapers, the funds from that publication would be deposited in the consolidated publications account.

III

Conclusion

In sum, the State Archivist has discretion to determine the content of the *Archives of Maryland* series. However, this discretion is not absolute. The *Archives of Maryland* series consists of the previously published printed volumes as well as future installments that are specifically identified as part of the series. Any future publications designated as part of the *Archives of Maryland* series should include texts of primary source documents of historical interest from the public records of Maryland such as court records, legislative proceedings, gubernatorial correspondence, convention journals, military proceedings, and the papers of public officials. The manner or format of publication is within the discretion of the State Archivist. Revenues derived from these installments should be credited to the State Archives Fund; revenues from services and

other publications should be placed in the consolidated publications account.

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