

eBay Sales of Public Records

Public records, including original municipal, county, state, and federal documents, have recently found their way to Ebay online auctions, and are now being bought and sold at an alarming rate. Unfortunately, Ebay's open market in county records seems to be encouraging theft from local archives, as has recently occurred in one Tennessee county. Archivists from the State Library & Archives have been working with county officials in Tennessee as well as other state archivists through CoSA (Council of State Archivists) in order to combat this growing problem. Historians, archivists, genealogists, and collectors need to be aware that buying and selling public records is illegal and should be avoided at all costs.

The law in Tennessee is on the side of archivists: *Tennessee Code Annotated* § 39-16-504, otherwise known as the Replevin law, prohibits the removal of governmental records from governmental agencies in the state—state, county, or municipal. The law provides for the restitution or repossession by government agencies of public records that have found their way into private hands. Records created by county government, even if they are in the possession of private individuals, remain as public property. Replevin law supplies a much needed mechanism for the county to regain custody of them.

Section (a)(3) states that it is unlawful to, "Intentionally and unlawfully destroy, conceal, remove or otherwise impair the verity, legibility or availability of a governmental records." Section (c)(1) and (2) further state that, "Upon notification from any public official having custody of government records, including those created by municipal, county or state government agencies, that records have been unlawfully removed from a government records office, appropriate legal action may be taken by the city attorney, county attorney, or general attorney, as the case may be, to obtain a warrant for possession of any public records which have been unlawfully transferred or removed in violation of this section," and that "such records shall be returned to the office of origin immediately after safeguards are established to prevent further recurrence of unlawful transfer or removal." Violating this law is a Class A misdemeanor.

The illegal sale of public records is by no means restricted to Tennessee or the mid-South, however. Three national organizations—CoSA, the National Association of Government Archives and Records Administrators, and the Society of American Archivists—are currently addressing this problem. According to James Henderson, the Director of the Maine State Archives, these organizations have "drafted a statement to be presented to Ebay...pointing out the legal prohibitions and requesting action to end such sales." [link to <http://www.statearchivists.org/issues/publ-rec-auctions.htm>] States have varying policies on this issue, so these groups are working with state archivists to establish some common principles. It is hoped that concerted action by many states will put pressure on Ebay to halt the trafficking in lost or stolen public records.

The efficacy of Tennessee's Replevin law and the willingness of local officials to pursue alleged transgressions were recently tested in one Tennessee

county. Several months ago an employee of this county's archives noticed items listed on Ebay that had once been safely stored in the county archives. Most of these were antebellum documents pertaining to slaves or some aspect of African-American history—apparently, items that are popular collectibles on Ebay and other antique markets. The employee brought this issue to the attention of TSLA archivists, who in turn worked with county officials to resolve the problem. We now know that these records were stolen from the county archive with the specific goal of selling them for profit—a particularly egregious crime, since slave documents are so rare and the genealogy of African Americans so difficult to trace before the Civil War. The thieves and purveyors of these stolen documents had, in effect, robbed thousands of descendants of this county's black inhabitants of their history and memory. After the sheriff's department took action, most of the documents have been recovered and one employee of the county archives has resigned.

All repositories holding public records should be aware of the growing market in county, state, and municipal records, especially those of unique interest, such as Civil War and slave-related items. Accordingly, custodians of public records should ensure that access to records is strictly monitored. If theft is suspected, it is important to report this information to the appropriate authorities. Common sense should prevail: keys to the repository should be held by one or two trustworthy individuals, patrons should have their personal belongings searched upon departure to ensure that no items have been removed, and archive visitors should be supervised carefully by an archivist familiar with the collection and aware of potential security concerns. Finally, genealogists, collectors, and all those interested in preserving Tennessee history need to understand the hazards of buying and selling public records. **State law is quite clear on this point: government documents cannot be bought and sold as if they were private property.**

If you believe that records from your county are being bought and sold on Ebay (or through other means), contact your county archivist and county executive. Or, you can contact our office at 253-3469 so that we can notify the appropriate authorities.