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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Use of Optical/Laser Disk Technology for Archive Purposes

Dear Dr. Martin:

You have asked whether it is legal for a public institution such as the College of Southern Idaho to use optical/laser disk technology for purposes of storing records. The information which accompanied your request indicates your primary concern is whether the courts of this state will accept records stored and retrieved using the optical/laser method as admissible evidence. Assuming that foundational requirements including relevancy and authentication are met in a given case, based upon our reading of Idaho law, it appears there is no inherent reason that information stored by this method would not be admissible as evidence.

Idaho has adopted the Uniform Photographic Copies of Business Records as Evidence Act, Idaho Code §§ 9-419 to 419. Section 9-417 states:

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If any business, institution, or member of a profession or calling, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original. (Emphasis added.)

Article X of The Idaho Rules of Evidence permits the admission into evidence of "duplicates." A "duplicate" is defined as:

A counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces [sic] the original.

I.R.E. 1001(4). Assuming the optical/laser method you have described "accurately reproduce[s] the original" record, then the "duplicates" which are retrieved would normally be admissible. See also, I.R.E. 1005 (public records).

The Idaho Rules of Evidence, patterned after the Federal Rules of Evidence, also appear to address the admissibility of hearsay evidence recorded by the method you have described. Rule 803 sets forth various exceptions to the hearsay rule. Among the types of evidence not excluded, even though technically hearsay, are certain "public records and reports":

Public records and reports. Unless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (A) investigative reports by police and other law enforcement personnel, except when offered by an accused in a criminal case; (B) investigative reports prepared by or for a government, a public office or an agency when offered by it in a case in which it is a party; (C) factual findings offered by the government in criminal cases; (D) factual findings resulting from special investigation of a particular complaint, case, or incident, except when offered by an accused in a criminal case.

I.R.E. 803(8); see also, 803(6).

In a leading case in which the admission of certain bank "computer records" was challenged, the Fifth Circuit Court of Appeals held that under F.R.E. 803(6) (a corollary to I.R.E. 803(6) cited above), "computer data compilations may be business records themselves, and should be treated as any other record of regularly conducted activity." Rosenberg v. Collins, 624 F.2d 659, 665 (5th Cir. 1980). The court found that computer business records are admissible if three conditions are met:

(1) The records must be kept pursuant to some routine procedure designed to assure their accuracy, (2) they

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must be created for motives that would tend to assure accuracy (preparation for litigation, for example, is not such a motive), and (3) they must not themselves be mere accumulations of hearsay or uninformed opinion. (Emphasis in original.)

Id., citing United States v. Fendby, 522 F.2d 181, 184 (5th Cir. 1975).

Based upon the description of the optical storage system you have described, and assuming the conditions noted above are met, it would appear likely that the courts of this state would admit records stored and retrieved by this method.

Very truly yours,

BRADLEY H. HALL
Chief Legal Officer,
State Board of Education, and
Deputy Attorney General