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**THE
CODE OF
CANON
LAW
A TEXT AND
COMMENTARY**

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mission unless delegated shop. If there is no modular role without use of the role that he should be able to grant general permission to have access to the specific conditions to be granted to all diocesan archives, provided that the chancellor's approval and the consent of the bishop or the chancellor are reasonably presumed. The diocesan bishop may grant general permission to have access to the specific conditions to be granted to all diocesan archives, provided that the chancellor's approval and the consent of the bishop or the chancellor are reasonably presumed.

The canon reproduces canon 378 of the 1917 Code in more general form. Instead of specifying three days for the use of a document and stating the ordinary's right to extend the time period, it prescribes that a document may be absent from the archives for "a brief time only." The detail about requiring a receipt is omitted. The word "writing" ("scripturas") is changed to "documents" ("documenta") as a more all-inclusive term. As in the previous canon, if no moderator of the curia has been appointed in a particular diocese, the vicar general who fulfills such a coordinating function could grant permission together with the chancellor for the temporary removal of archival documents. The diocesan bishop can grant such permission on his own. The permission of the bishop or the moderator of the curia can be reasonably presumed in ordinary circumstances, and the bishop can also delegate the chancellor to grant permission without his consent or that of the moderator of the curia. General permission to use documents can be given to curial officers such as, e.g., the director of priest personnel and his secretary regarding the files of individual priests. With the ease of photocopying today, there is little call for the removal of documents except perhaps to consult a file during working hours. For longer use, the originals should be retained in the archives and copies sent to the interested party (notarized if necessary).

Canon 489 — §1. There is also to be a secret archive in the diocesan curia or at least a safe or file in the ordinary archive, completely closed and locked which cannot be removed from the place, and in which documents to be kept secret are to be protected most securely.

§2. Every year documents of criminal cases are to be destroyed in matters of morals in which the criminal has died or in which ten years have passed since the condemnatory sentence; but a brief summary of the case with the text of the definitive sentence is to be retained.

The detailed legislation of the 1917 Code concerning the secret archives (*CIC* 379-382) has been reduced to two canons (cc. 489-490). Every diocesan curia must have a secret archive, at least in the form of an especially secure safe or file cabinet. The canon does not specify all of the documents which should be stored in this archive although the second paragraph mentions one category, i.e., criminal cases involving questions of morals.³¹ The acts or such "penal procedures"³² should be destroyed when the guilty person has died or the case has

been completed for ten years.³³ Until they are destroyed, the acts are retained in the secret archives; after they have been destroyed, a summary of the case with the definitive sentence should be kept in the secret archives. Other confidential documents are also normally stored in the secret archives: matrimonial dispensations in the non-sacramental internal forum (c. 1082); the register for secret marriages (c. 1133); dispensations from impediments and irregularities to orders (cc. 1047, 1048); decree of dismissal from a religious institute (c. 700); and documents relating to the loss of the clerical state by invalidity, penalty, or dispensation (cc. 290-293). Very few canons explicitly require storage in the secret archives. It is left to the discretion of the diocesan bishop to determine which matters should be placed in the general archives and which relegated to the secret archives. This task will normally be delegated to the chancellor. In this area, it is important for dioceses to investigate the civil laws of their particular region in order to protect all their archives, especially this secret archive, from subpoena and other legal invasive strategies.

Canon 490 — §1. Only the bishop may have the key to the secret archive.

§2. When the see is vacant the secret archive or safe is not to be opened, except in a case of true necessity by the diocesan administrator himself.

§3. Documents are not to be removed from the secret archive or safe.

The detailed norms concerning two separate keys for the secret archives are omitted (*CIC* 379-381); they are replaced by the simple statement that the diocesan bishop alone should have the key to the secret archives (§1). The implication of the second paragraph is that the key would normally be given to the diocesan administrator *sedes vacante*. The third paragraph explicates the inference of canon 379, §4 of the former Code that no document should be removed from the secret archives even for a brief period of time. The diocesan bishop can dispense from these universal disciplinary norms (c. 87). Thus, he might wish to consign a duplicate key to the vicar general or the chancellor with authority to permit access to the secret archives for legitimate reasons. A distinction should be drawn between documents deposited in the secret archives because of the requirement of law (e.g., matrimonial dispensations in the internal forum) and those placed there at the discretion of the bishop or chancellor. The prohibition against removal of the latter from the archives should not be interpreted as strictly as the removal of the former. Photocopying is equivalent to removal since the intent of the norm is not

simply to preserve the original (as in c. 488) but to avoid dissemination of the information contained in the document. Nonetheless, if necessity warrants it, the diocesan bishop may permit certified copies to be made for legitimate confidential use. In such cases, however, the copies should be returned to the chancellor for filing or destruction.

The principles of the Code concerning general and secret archives need accommodation and concretization. The canons address only two levels of confidentiality (normal records and secret records). In fact, however, there are many grades of confidentiality attached to the various documents preserved in curial archives. While the canons provide flexibility through the use of authoritative permissions, a curia with an organized system will need to draft written policy and procedures for the many levels of access and information-sharing which administration requires, possibly adopting in some cases even the governmental model of variously "classified" documents.

Canon 491 — §1. The diocesan bishop is to see to it that the acts and documents of the archives of cathedral, collegiate, parochial and other churches in his territory also are diligently preserved; also, inventories or catalogs are to be made in duplicate, one of which is to be kept in the church's own archive and the other in the diocesan archive.

§2. The diocesan bishop is also to see to it that there is an historical archive in the diocese in which documents having an historical value are diligently preserved and systematically arranged.

§3. In order to inspect or remove the acts and documents spoken of in §1 and 2 above, the norms established by the diocesan bishop are to be observed.

The first paragraph states more clearly than did canon 383, §1 of the 1917 Code that the diocesan bishop is responsible for the establishment and upkeep of archives in those juridic persons which are subject to him, particularly parishes. The canon does not require that copies of the documents in such archives be sent to the curial archives, but it does demand that an inventory of these documents in the form of a catalog or index be kept on file at the diocesan level. This is an area of parochial responsibility which can be of great importance for a parish and yet one which may often be sadly neglected or poorly implemented. The universal law does not constitute a separate archival officer at the parish level, and there are frequent changes of administration in parishes. There is more likelihood, therefore, that parish records will be treated hazily. The canon provides for norms to be issued by the diocesan bishop concerning the inspection and removal of documents (§3). Such norms would do well to include guidelines for par-

³¹"Penal procedures" is a more accurate term than "criminal cases." (Cf. cc. 1387, 1390, 1394, 1395, 1398.)

³²Cf. cc. 1717-1731.

³³The 1917 Code had specified destruction by burning (*CIC* 379, §1).