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Monitoring Law Enforcement in Archival Legislation for Legal Loop-Holes: A Case-Study of the Activities of the Archival Agency of the Kurgan Region

Abstract

The authors study legal loop-holes in the archival legislation. As it is impossible to analyze the whole of archival legislation, including regional laws and regulations of all subjects of Russia, the article focuses on the Federal law. It draws on practices of the Archival Agency of the Kurgan Region and addresses practical concerns. It analyzes inconsistencies and legal loop-holes in implementation of following three laws: the Federal law of October 22, 2004 no. 125-FZ 'On archiving in the Russian Federation,' the Federal law of 26 December, 2008 no. 294-FZ 'On protection of rights of legal persons and self-employed entrepreneurs in the exercise of state control (supervision) and municipal control,' and the Federal law of April 5, 2013 no. 44-FZ 'On contract systems in the sphere of procurement of goods, works and services for provisioning governmental and municipal needs.' The study has identified the following legal loop-holes and inconsistencies:

- (1) There is a legal loop-hole in implementation of the control function. No clear demarcation of jurisdictions of the Russian Federation and those of the subjects of the Russian Federation is provided in Federal laws no. 294-FZ and no. 125-FZ;
- (2) There is a contradiction between Federal laws no. 125-FZ and no. 44-FZ. In case of winding-up of a state procurement agency and transferring its powers to a government agency, documents on primary activity are to be filed in a state archive and also to remain in the new government agency;
- (3) Lack of uniform and federally approved methodology for division of ownership of archival documents between municipalities and subjects of the Russian Federation result in similar documents falling under different forms of ownership in different regions;
- (4) Lack of regulatory framework in acquisition and transfer of e-documents to state archives hinders introduction of a full-featured e-document interchange between state authorities.

The authors contend that these legal loop-holes and inconsistencies should be corrected.

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Keywords

Archival legislation, legal loop-holes, Federal law no. 125-FL, archival agency, archival documents.

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