



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
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April 7, 2017

Rick Colgan
[REDACTED]

RE: *File No.17-R-117; Dodge County Board of Supervisors/Dodge County Clerk; Rick Colgan, Petitioner*

Dear Mr. Colgan:

This letter is in response to your correspondence submitted via our Consumer Protection website on March 22, 2017, in which you challenge the amount of the copy fee recently adopted by the Dodge County Board of Supervisors ("Board"). When we receive petitions of this nature, our normal practice is to contact the entity involved and advise it of the opportunity to provide a response to this office. In the present case, we contacted the Dodge County Clerk, Fred Mytty, and advised him accordingly. On March 29, 2017, Mr. Mytty contacted the undersigned by telephone to discuss this matter and, per our request, submitted an email to us regarding the conversation. We have construed your correspondence to be a petition for review under Neb. Rev. Stat. § 84-712.03 of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2016) ("NPRS").

YOUR PETITION

According to your petition, the Board adopted a policy for copy fees at \$1.00/sheet at its regular meeting sometime on or around February 15, 2017.¹ You state that the Board did so at the advice of the county auditor, and that the policy applied to all "departments in the courthouse." You indicate that you informed the Dodge County

¹ Your petition included a copy of the February 21, 2017 memorandum sent to "County offices" by Mr. Mytty, with the subject line "Copy charges." The memorandum advises that "[a]t the February 15, 2017 meeting of the Dodge County Board of Supervisors, the Board unanimously passed a motion setting the uniform copy fee of \$1.00 per copy and \$5.00 per copy for sheriff's reports, effective immediately. The county's auditor suggested the County Board set the uniform fee for all county departments."

Attorney, Oliver Glass, of this “malfeasance.” At the Board’s March 15 meeting, Mr. Glass advised the Board “to change the price to conform with statute and a previous Attorney General’s opinion.”²

You allege that the price set by the Board violates Neb. Rev. Stat. § 84-712(3)(b) (2014) of the NPRS, which provides, in pertinent part:

(b) Except as otherwise provided by statute, the public body, public entity, or public official which is the custodian of a public record may charge a fee for providing copies of such public record pursuant to subdivision (1)(b) of this section, which fee shall not exceed the actual added cost of making the copies available. For purposes of this subdivision, (i) for photocopies, the actual added cost of making the copies available shall not exceed the amount of the reasonably calculated actual added cost of the photocopies, which may include a reasonably apportioned cost of the supplies, such as paper, toner, and equipment, used in preparing the copies, as well as any additional payment obligation of the custodian for time of contractors necessarily incurred to comply with the request for copies

You further state that while you cannot determine a price relating to the proper apportionment of equipment necessary to produce a photocopy, you estimate the cost of paper and toner to be around three cents. You question how the Dodge County’s costs could be \$1/page since many copy shops charge between \$.09 and \$.39 for black and white copies. You request, among other things, that the Board amend its policy so the cost of copies is the “actual added cost per statute.”

DISCUSSION

The basic premise of the Nebraska public records law—authorizing Nebraska citizens and interested persons to examine public records, free of charge, during normal office hours—has existed since territorial days. It was not until the year 2000 that the statute was changed to provide individuals an express right to make or receive copies of public records. See 2000 Neb. Laws LB 628, § 1. Citizens and interested persons are now authorized by statute to make copies of public records using their own copying or photocopying equipment, and to obtain copies of public records from public agencies unless federal copyright law provides otherwise.

² The Board’s March 15, 2017 meeting minutes state that “[t]he Board took no action reconsidering a motion made at the February 15, 2017 meeting regarding uniform copy fees. County Attorney Glass remarked the statutes are not clear and the party submitting the request to him for the County Board to reconsider the motion was looking at an Attorney General’s opinion made 16 years ago in 2001.”

In 2013, the Nebraska Legislature amended the fee provisions in § 84-712 in several significant respects. 2013 Neb. Laws LB 363. As noted above, § 84-712(3)(b) now provides that fees for copies of public records shall not exceed the *actual added cost* of making the copies available. In addition, pursuant to § 84-712(3)(c),

[t]he actual added cost used as the basis for the calculation of a fee for records shall not include any charge for the existing salary or pay obligation to the public officers or employees with respect to the first four cumulative hours of searching, identifying, physically redacting, or copying. A special service charge reflecting the calculated labor cost may be included in the fee for time required in excess of four cumulative hours, since that large a request may cause some delay or disruption of the other responsibilities of the custodian's office, except that the fee for records shall not include any charge for the services of an attorney to review the requested public records seeking a legal basis to withhold the public records from the public.

Neb. Rev. Stat. § 84-712(3)(c) (2014).

We note that the Attorney General opinion referenced in your petition was issued in response to several inquiries received by this office concerning the amount that could be charged for photocopies in light of the passage of the LB 628 in 2000. In Op. Att'y Gen. No. 01029 (August 2, 2001), the Attorney General indicated that the actual costs which may be charged for photocopies of public records included the cost of copy paper, toner, copy machine rental, etc., plus an appropriate amount for the staff time of public employees involved in locating the records, making copies and returning the records to the proper files, not to exceed the amount of time reasonably needed to perform those tasks in a particular case. The Attorney General also indicated that it was his enforcement policy not to question charges of up to 10 cents per page for making photocopies of public records for members of the public. However, under the current version of § 84-712(3), the actual added costs for photocopies (as well as printouts of computerized data on paper and electronic data) are expressly defined. Moreover, labor charges for the time of public employees needed to find responsive records and to make copies of public records can only be charged for time expended in excess of four cumulative hours.

With respect to the fee at issue here, Mr. Mytty has represented to the undersigned that the Board will be revisiting its policy at its meetings on April 12.³ Consequently, this file will remain open pending completion of that meeting. We would request that Mr. Mytty or Mr. Glass provide this office with a revised policy as soon as practicable, but in no

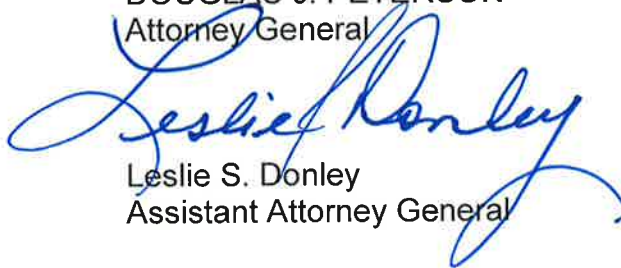
³ Item 14 of the Board's preliminary agenda for the April 12 meeting indicates that the Board will address "[p]ossible action on request for response to the county's compliance and/or any other action to be taken regarding copy fees."

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event later than the close of business on April 17, 2017. In the meantime, if any of the county officials involved in this matter have any questions as to their duties under the Nebraska Public Records Statutes, please contact the undersigned.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Bob Missel
Fred Mytty
Oliver Glass

49-1759-29