

LETTER OPINION
2000-L-94

May 26, 2000

Mr. James Johnson
Mercer County State's Attorney
PO Box 39
Stanton, ND 58571

Dear Mr. Johnson:

Thank you for your letter asking for my opinion regarding the fee a county sheriff must charge for copies of records.

The fee which government entities are generally authorized to charge for copies of public records is described in N.D.C.C. § 44-04-18(2):

Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. . . . The entity may charge a reasonable fee for making or mailing the copy, or both. An entity may require payment before making or mailing the copy, or both. . . . As used in this subsection, "reasonable fee" means the actual cost to the public entity of making or mailing a copy of a record, or both, including labor, materials, postage, and equipment, but excluding any cost associated with excising confidential or closed material under section 44-04-18.8. . . . This subsection does not apply to copies of public records for which a different fee is specifically provided by law.

(Emphasis added). As you note in your letter, this office has previously concluded that a copying fee of two dollars per page exceeded the actual cost to the public entity of making the copy and therefore was not a "reasonable fee" under this subsection. 1998 N.D. Op. Att'y Gen. 0-17 (Mar. 3 to Norbert Sickler and Franklin Appledorn). However, the sentence underlined above indicates that the general copying fee authorized in N.D.C.C. § 44-04-18(2) does not apply if another statute specifies a different amount. See generally Robot Aided Mfg. Inc. v. Moore, 589 N.W.2d 187 (N.D. 1999) (motor vehicle abstracts and source documents); 1996 N.D. Op. Att'y Gen. L-232 (Dec. 3 to J. Thomas Traynor) (accident reports).

N.D.C.C. § 11-15-07(4) provides that a sheriff shall charge and collect, "[f]or making a copy of any . . . paper, other than as is herein provided, two dollars per page." The last sentence in N.D.C.C. § 44-04-18(2) removes any potential conflict between that

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subsection and a statute which authorizes a different fee for copies of public records. Therefore, it is my opinion that the copying fee for papers in the possession of a county sheriff is two dollars per page under N.D.C.C. § 11-15-07(4) and not the "reasonable fee" authorized in N.D.C.C. § 44-04-18(2).

I note that the specific copying fee in N.D.C.C. § 11-15-07(4) is limited to "papers," whereas the definition of "record" for purposes of N.D.C.C. § 44-04-18(2) is much broader and includes all recorded information regarding public business regardless of the form in which the information is stored. N.D.C.C. § 44-04-17.1(15). Thus, if the record requested from a sheriff is a paper document, the sheriff shall charge two dollars per page under N.D.C.C. § 11-15-07(4). However, if a person requests a record in a different form, such as a computer file, audiotape, or videotape, the sheriff would be limited under N.D.C.C. § 44-04-18(2) to charging the actual cost of making the copy.

A copying charge of two dollars a page will almost always exceed the cost to the sheriff of making the copy and could potentially inhibit the public's right to obtain copies of public records in a sheriff's office. To promote the public's right to copies of open public records, the Legislature has adopted the general rule in N.D.C.C. § 44-04-18(2) which limits copying charges to the actual cost to the public entity of making the copy. I hope the fee in N.D.C.C. § 11-15-07(4) will be examined before the next legislative session and that a bill will be prepared to reduce the fee if it is determined that this fee is unnecessary in light of the general statutory authority of a county to defray its actual cost of making copies of public records.

Sincerely,

Heidi Heitkamp
Attorney General

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