

Date Issued: January 20, 1982 (AGO 82-2)

Requested by: Herbert Engberg, Mayor, City of Crosby

- QUESTION PRESENTED -

Whether an elected county official may permit access after office hours, to public records of the county, kept inside the county courthouse, and personally accept compensation from the people allowed access.

-ATTORNEY GENERAL'S OPINION -

It is my opinion that an elected county official may allow individuals access to public records under his control kept in the county courthouse, after regular office hours, and may not receive compensation directly from people allowed access but only that additional compensation as set by the board of county commissioners.

- ANALYSIS -

All persons have a right to inspect public records, such as those in the register of deeds office, without payment of a fee, during reasonable office hours. Section 44-04-18 of the North Dakota Century Code. The board of county commissioners, has the authority to set the hours of operation of the courthouse. In doing so, they can allow the courthouse or certain offices to be open on Saturdays or after regular office hours.

The board of county commissioners has the duty to set the salaries of county officers in accordance with section 11-10-10, N.D.C.C. Section 11-10-10(4), N.D.C.C. which provides in part that:

The board of county commissioners of any county may, by resolution, increase the salary of any full-time county official provided in this section or section 27-08-08, if, in the judgment of such board, by reason of duties performed, the official merits the increase.

The board of county commissioners can consider the reason of the duties performed in its resolution to increase the salary of any county officer as a result of having to be available at other than regular office hours to provide access to persons to inspect public records.

No county officer has the right to charge a fee for access to public records at other than reasonable office hours and any fee so collected must be turned over to the county treasurer pursuant to section 11-10-14, N.D.C.C., which states in part that:

The salaries fixed by this chapter shall be full compensation for all county officials, deputies, clerks, and assistants, respectively, and all fees and compensation received by any official, deputy, clerk, or assistant for any act or service rendered in his official capacity shall be accounted for and paid

over monthly to the county treasurer and be credited to the general fund of said county, . . .

Therefore, no county official can personally accept compensation from people allowed access to public records at other than reasonable office hours.

It is my opinion, however, that the board of county commissioners can charge a fee for access to public records at other than reasonable office hours to defray any additional expenses such as janitorial services, supervision, utilities and like items. This fee is within the discretion of the board of county commissioners. The board of county commissioners may not, of course, set unreasonably restrictive office hours so as to charge fees for inspection of public records at times other than those hours.

If a board of county commissioners does establish a reasonable fee to defray the costs of expenses for allowing access to the public records in a county building at other than reasonable office hours, the county official collecting this fee must pay it over to the county treasurer for deposit to the county general fund as provided in section 11-10-14, N.D.C.C.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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