



STATE OF KANSAS

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January 13, 1987

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ATTORNEY GENERAL OPINION NO. 87- 4

Gene Porter  
Barton County Attorney  
Barton County Courthouse  
P.O. Box 881  
Great Bend, Kansas 67530

Re: Laws, Journals and Public Information -- Records  
Open to Public -- Abstracts or Copies of Records;  
Fees

Synopsis: The Kansas Open Records Act provides that public agencies may charge reasonable fees for photocopying public records. Fees are reasonable if they do not exceed the actual cost, or costs directly incurred, in providing copies. The twenty cents per page fee charged by Unified School District No. 431 is not unreasonable as it reflects the actual costs incurred in furnishing copies of public records. Cited herein: K.S.A. 45-215; 45-216; 45-219; 5 U.S.C. §552.

\* \* \*

Dear Mr. Porter:

As county attorney for Barton County, Kansas, you request our opinion whether fees charged by Unified School District (U.S.D.) No. 431, Hoisington, for photocopying records are "reasonable" under the Kansas Open Records Act (KORA), K.S.A. 45-215 et seq. This matter has been a long-standing point of controversy as a patron of the school district contends that the assessment of twenty cents per page is excessive.

Under the KORA, records of public agencies must be open to the public unless otherwise provided. K.S.A. 45-216. Any person

has the right not only to inspect, but to obtain copies of public records. K.S.A. 45-219(a). Public agencies may, however, charge "reasonable fees" for furnishing copies:

"In the case of fees for copies of records, the fees shall not exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available."  
K.S.A. 45-219(c)(1). (Emphasis added.)

An agency may require advance payment of the fee before copies are made. K.S.A. 45-219(a); State ex rel. Stephan v. Harder, 230 Kan. 573, Syl. ¶7 (1982).

U.S.D. No. 431 bases its photocopying fee on the following:

	<u>Total</u>	<u>Yearly</u>
Copier Cost	6,650.	1,330.00
Maintenance Agreement	(5 yr. life	552.00
Toner Cost	expected)	525.00
		<u>2,407.00</u>
2407 ÷ 80,000 average copies per year = .03 per copy		
<u>PAPER COST</u>		
Ream \$3.38 ÷ 500 = .007 per copy		
<u>LABOR COST FOR RUNNING COPIER</u>		
Clerical staff in central office average salary per hour including salary, fringe, and social security =		7.69 per hour
		or .128 per min.
128 ÷ 34 copies per minute (copier speed) =		.003 per copy
<u>OTHER LABOR COSTS:</u>		
Type mailing labels, make billings, make receipts, run postage meter, provide change, assemble, staple, time off other tasks (estimate 30 seconds per page) =		.064
Summation of Costs: Per Page		
Copying machine		.03
Paper Cost		.007
Labor to run copier		.003
Other Labor Costs		.064
9" x 12" mailing envelope		.07
		<u>.174*</u>

\*Does not include utility costs or copier maintenance not covered by maintenance agreement. (Drums are guaranteed for 120,000 copies and cost \$329. per drum.)

Taking the above listed costs and costs unforeseen as noted by the \* it is recommended that that [sic] USD 431 charge for copying open record information be set at .20 cents per copy.

- Variables not considered:
- 8 1/2" x 14" paper is higher priced (4.16 per ream) than the 8 1/2" x 11" that is quoted.
  - 8 1/2" x 14" paper runs slower (28 copies/minute) than the 8 1/2" x 11" that is quoted.
  - calculated on central office machine.

There is no case law in Kansas interpreting reasonableness of copying fees. The federal counterpart to the KORA, the Freedom of Information Act (FOIA), also provides that fees may be charged for furnishing copies:

"Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such research and duplication." 5 U.S.C. §552(a)(4)(A).

The court in Long v. U.S. Internal Revenue Service, 596 F.2d 362 (1979), cert. denied 446 U.S. 917 (1980), interpreted this provision as follows:

"The legislative history indicates that the intent of the amendment [permitting fees] was so that 'fees should not be used for the purpose of discouraging requests for information as or obstacles to disclosure of requested information.' S. Rep. No. 1200, 93rd Cong., 2d Sess. (1974); [1974] U.S. Code Cong. & Ad. News 6267, 6287."

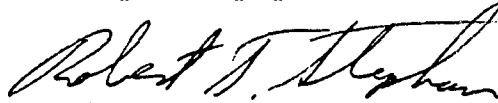
According to K.S.A. 45-219(c)(1), fees are reasonable if they do not exceed the actual cost of furnishing copies. It is not clear what may be included in the calculation of "actual cost." The League of Kansas Municipalities has taken the position that "any fee charged up to and including the actual costs incurred is reasonable." League of Kansas Municipalities, Open Public Records: A Manual for Local Governments on the 1983 Kansas Open Records Act, P.48 (1983) (emphasis in original). The handbook provides that the following may be included as actual costs: staff time, including fringe benefits; equipment, including materials, depreciation, and maintenance; that portion of overhead attributed to providing facilities involved in producing copies of records, including heating, cooling, maintenance and insurance; and mailing handling and incidental costs. Id. at 48-49.

One commentator on the KORA has researched the legislative history of the "reasonable fees" provision and has concluded that the legislature did not intend the calculation of actual costs to include overhead costs. Frederickson, Letting the Sunshine In: An Analysis of the 1984 Kansas Open Records Act, 33 U.Kan.L. Rev. 205, 229 (1985). We agree that "[f]ees must not be designed to produce revenue, but rather to compensate the state for resources required to comply with a request." Id.

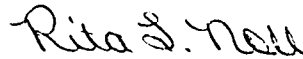
In determining actual cost, we are of the opinion that only those costs directly incurred in producing copies can be recovered. Direct costs include, but are not necessarily limited to, staff time, paper, and machine costs. General building overhead expenses should not be included if such costs would exist notwithstanding the requirement that public agencies furnish copies of public records.

The costs estimated by U.S.D. No. 431 reflect costs directly incurred in producing photocopies. It was determined that the actual cost to furnish a copy is 17.4 cents per page. The school district charged a fee of 20 cents per page. Calculating photocopying fees is not an exact science but is based on estimates. Therefore, it is our conclusion that, based on the actual costs incurred, the fee of 20 cents per page charged by U.S.D. No. 431 to furnish requested copies of public records is not unreasonable.

Very truly yours,



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