

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

May 24, 2000

Opinion No. 00-101

County Contract to Sell Public Records

QUESTION

Is it lawful for a county to enter into a business venture with a private entity to sell public records?

OPINION

The legality of any particular arrangement would depend on all of its terms and conditions. Any such contract would have to be consistent with the county's statutory duty to provide public access to public records. For example, except in the narrow circumstances regarding maps set forth in Tenn. Code Ann. § 10-7-506(c), or some other applicable exception, a county generally may not charge more than the actual cost of allowing access to public records or providing a copy of the record. Accordingly, a court could conclude that, absent express statutory provisions, such a contract is not authorized.

ANALYSIS

You have asked whether it is lawful for a county to enter into a business venture with a private entity to sell public records. The legality of any particular arrangement would depend on all of its terms and conditions. We assume that, under the arrangement, the county would contract with a private entity to provide the entity with copies of records to which access must be provided to the general public under Tenn. Code Ann. §§ 10-7-503, *et seq.* Under that statutory scheme, public records must "at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law." Tenn. Code Ann. § 10-7-503(a). Under Tenn. Code Ann. § 10-7-506(a):

In all cases where any person has the right to inspect any such public records, such person shall have the right to take extracts or make copies thereof, and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof or such custodian's authorized deputy; provided, that the lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats.

Tenn. Code Ann. § 10-7-506(a). In addition, where applicable, the county records commission has the power to establish charges for and to collect such charges for making and furnishing or enlarging copies of records. Tenn. Code Ann. § 10-7-409.

The Tennessee Supreme Court has held that the custodian of public records is authorized to charge the *actual costs* it incurs in disclosing a public record in the exact format requested by a member of the public. *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297, 305 (Tenn. 1998). This Office has also concluded that the custodian of records may charge only as much as reasonably approximates the actual cost of copying a public record. Op. Tenn. Atty. Gen. 80-455 (September 19, 1980). The Public Records Act contains a narrow provision applicable in a few counties allowing a county legislative body to establish and impose copying fees that reflect the actual development costs of certain maps or geographic data. Tenn. Code Ann. § 10-7-506(c). Outside of this provision, or some other applicable exception, a county may generally not, by contract or otherwise, charge a private entity more than its actual cost to copy public records.

Counties are creatures of statutes and have only such powers as are expressly conferred by the legislature or necessarily implied from such grants of power. *Metropolitan Government of Nashville and Davidson County v. Allen*, 220 Tenn. 222, 225, 415 S.W.2d 632 (1967); *Bayless v. Knox County*, 199 Tenn. 268, 281, 286 S.W.2d 579 (1955); *Hicks v. Fox*, 190 Tenn. 82, 86, 228 S.W.2d 68 (1950); *State ex rel. Citizens of Wilson County v. Lebanon & Nashville Turnpike Co.*, 151 Tenn. 150, 160, 268 S.W. 627 (1924). Accordingly, a court could conclude that, depending on the particular terms of the contract, and absent express statutory provisions, a county is not authorized to enter into a contract to sell public records.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Page 3

Requested by:

Honorable Zane C. Whitson, Jr.
State Representative
204 War Memorial Building
Nashville, TN 37243-0105