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Opinion No. 02-065

Cities under the Public Records Act

QUESTIONS

1. Do city governments fall under the purview of Tenn. Code Ann. §§ 10-7-501, *et seq.*, regarding access to public records?

2. Under the provisions of Tenn. Code Ann. § 10-7-506(a), may city governments arbitrarily set a fee for copying or duplicating routine public records?

a. In this instance, would the city government be bound by *The Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998), concluding 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?

b. Are city governments also subject to the requirement as interpreted in Op. Tenn. Atty. Gen. 80-455 (September 19, 1980) that "the custodian of records may charge only as much as reasonably approximates the 'actual costs' of copying a public record"?

c. May a city government generally charge more than its actual cost to copy public records?

OPINIONS

1. Yes.

2. No, under Tenn.Code Ann. § 10-7-506(a), the custodian of public records may charge a copying fee only under reasonable rules.

a. Yes.

b. Yes.

c. No, absent express statutory authority.

ANALYSIS

1. Cities Under the Public Records Act

This opinion addresses the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-501, *et seq.* The first question is whether cities are subject to the act. Tenn. Code Ann. § 10-7-503(a) provides in relevant part:

> Except as provided in § 10-7-504(f), all state, county and *municipal* records . . . shall 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.

(Emphasis added). Clearly, cities are subject to these requirements with regard to municipal records.

2. Charging a Fee for Copying under Tenn. Code Ann. § 10-7-506(a).

The second question concerns a city's right to charge fees for copying public records. Tenn. Code Ann. § 10-7-506(a) provides:

> 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.*

(Emphasis added). Under this statute, a custodian of public records may charge a fee for copying records only under reasonable rules. Op. Tenn. Atty. Gen. 01-021 (February 8, 2001). A custodian, therefore, may not arbitrarily set a fee for providing copies of public records to a citizen. Whether a particular fee is arbitrary would depend on all the relevant facts and circumstances, especially the actual cost of copying the record.

a. Applicability of *The Tennessean v. Electric Power Board of Nashville*

The next question is whether a city government is bound by *The Tennessean v. Electric Power*

Board of Nashville, 979 S.W. 2d 297 (Tenn. 1998). In that case, the Tennessee Supreme Court found that a city electric utility was authorized under the Public Records Act to require a requesting newspaper to pay the utility's costs in disclosing a public record in a specific format. This case is applicable to city governments.

b. Authority to Charge Fee

The next question concerns an opinion issued by this Office. Op. Tenn. Atty. Gen. 80-455 (September 19, 1980). There, this Office concluded that, under the Public Records Act, the custodian of records may charge only as much as reasonably approximates the actual cost of copying a public record. The question is whether cities are subject to this requirement. This Office recently cited this opinion in another opinion directly addressing the applicability of the Public Records Act to local governments. *See* Op. Tenn. Atty. Gen. 01-021 (February 8, 2001). Cities, therefore, are subject to this limitation.

c. Authority of City to Charge More than its Actual Cost to Copy Public Records

The last question is whether a city government may generally charge more than its actual cost to copy public records. As discussed above, under the Public Records Act, the custodian of records may charge only as much as reasonably approximates the actual cost of copying a public record. Absent a specific statute, therefore, a city may not charge a copying fee that is greater than the actual costs of copying the record.

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