



# STATE OF INDIANA

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July 6, 2010

Mr. David R. Snyder  
236 E. Pondle Street  
South Bend, IN 46637-3432

*Re: Formal Complaint 10-FC-139; Alleged Violation of the Access to Public Records Act by the St. Joseph County Clerk*

Dear Mr. Snyder:

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Clerk (the "Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Clerk's response to your complaint is enclosed.

## BACKGROUND

In your complaint, you allege that you requested a copy of certain records from the Clerk. In response, the Clerk informed you that there would be a per-page cost of one dollar (\$1) for copies and two dollars (\$2) for certified copies. You seek clarification regarding the appropriateness of these fees and suspect that they may be excessive under the ARPA.

In response to your complaint, Rita Glenn, the clerk of St. Joseph County, states that the fees are mandated by Local Ordinance No. 59-08, which was adopted on August 12, 2008, in St. Joseph County. That ordinance requires the Clerk to collect a fee of \$1 per page for a copy of any document. The Clerk notes that the ordinance was adopted pursuant to Ind. Code § 33-37-5-1.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. The Clerk does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy

the Clerk's public records during regular business hours unless the records are excepted from disclosure as confidential or nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The APRA permits a public agency to charge a fee for copying a record, but sets certain limits on the amount of the copying fee depending upon the type of public agency. *See* I.C. § 5-14-3-8. Normally, a charge of \$1 per page would be excessive for a public agency to charge an individual when the cost of copying cannot exceed the "actual cost of copying." *Id.* However, the APRA also provides that notwithstanding other provisions within section 8 of the APRA, a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court. I.C. § 5-14-3-8(f). Thus, where a specific statute other than the APRA provides a public agency with the authority to charge a fee that exceeds the "actual cost," the public agency may charge the statutory fee without violating the APRA. Under I.C. § 33-37-5-1, a court clerk shall collect a fee of one dollar (\$1) per page for legal size or letter size pages, including a page only partially covered with writing. Moreover, section 3 of that chapter provides that "[n]otwithstanding IC 5-14-3, the clerk shall collect a document fee of one dollar (\$1) for each certificate under seal attached in authentication of a copy of any record, paper, or transcript. I.C. § 33-37-5-3. Thus, it is my opinion that the Clerk has not violated the APRA by charging you the fee of one dollar (\$1) per page for copies of the requested records or the two dollar (\$2) per page fee for certified copies.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk has not violated the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Rita L. Glenn