

September 29, 1999

Mr. Gary Emberton
c/o Mr. John Emry, Attorney
62 West Jefferson Street
Franklin, Indiana 46131-6070

Re: *ADVISORY OPINION No. 99-FC-3:*

Johnson County's copy fee ordinance and Indiana Code 5-14-3-8(d).

Dear Mr. Emberton:

You filed a formal complaint against Johnson County government and this Office received that complaint on September 3, 1999. In that complaint, you allege that the County's copy fee ordinance exceeds the standards set forth in the Access to Public Records Act, specifically, Indiana Code section 5-14-3-8(d). A copy of your complaint was faxed to Johnson County Auditor Deborah Shutta and Johnson County Surveyor Douglas Lechner on September 7, 1999. These officials provided written responses, copies of which are enclosed.

I also contacted Ms. Pam Young, president of the Johnson County Council concerning your complaint and she referred the matter to Mr. Phil Wilson, Johnson County Attorney, for response. A copy of Mr. Wilson's letter to your attorney, Mr. John Emry, is also enclosed for your reference.

For the reasons stated below, it is my opinion that the current Johnson County copy fee ordinance, which sets a per-page copy fee of \$0.50, exceeds the standards for "actual cost" as defined at Indiana Code section 5-14-3-8(d), as amended and effective on July 1, 1999.

BACKGROUND

According to your complaint, on August 19, 1999, you requested copies of Johnson County Drainage Board minutes from the Johnson County Surveyor's Office. You were charged \$0.50 per-page under the county ordinance setting copy fees for county offices. For seventy-one pages, you paid \$35.50. You then asked the Johnson County Auditor's Office for a copy of the county ordinance setting the per-page copy fee at \$0.50 per-page. This ordinance, Johnson County Ordinance 98-2, was two pages in length and cost an additional \$1.00. You contend that the County's per page copy fee exceeds the "actual cost" of copying as clearly defined by the Indiana General Assembly, effective July 1, 1999. See, Indiana Code rc 5-14-3-8(d).

In response to your complaint, County Surveyor Lechner responded that he charged you the fee

as set forth in Johnson County Ordinance 98-2 and that any concerns should be directed to the Johnson County Council, the fiscal body for the county and the entity responsible for setting fees under Indiana Code section 5-14-3-8(d). Similarly, County Auditor Shutta responded that the copy fee charged in her office conformed to the same ordinance and that the County Council was aware of a change in Indiana Code section 5-14-3-8(d). In fact, the County Council discussed this issue in their July 12 and August 9, 1999 meetings, but tabled the discussion of Ordinance 98-2 to its October meeting. Copies of the relevant portions of the Council minutes were submitted with Auditor Shutta's response.

At the request of Council President Young, County Attorney Wilson contacted your legal counsel, John Emry concerning your complaint. While the County Council did discuss the statutory amendments concerning copy fees at its July and August meetings, the Council delayed action until input on how to proceed could be received from the Association of Indiana Counties. According to Mr. Wilson, the Council will take action to conform to the recent statutory amendments concerning copy fees and to provide for reimbursement of any excess copy fees paid retroactive to July 1st of this year.

ANALYSIS

The standards for copy fees for public records are set forth at Indiana Code section 5-14-3-8. For local governments, the copy fee for documents shall be set by the fiscal body for the unit of government and reflect the "actual cost" of the copy. "Actual cost" was clearly defined by the Indiana General Assembly in 1999 as the "cost of the paper and the per-page cost for use of the copying or facsimile equipment, and does not include labor costs or overhead costs." Indiana Code §5-14-3-8(d), as amended by PL 151-1999, §1. While the law does not set a minimum or maximum amount for a per-page copy fee, it is not likely that the cost of a piece of paper plus the per-page cost of the use of a copying machine will approach \$0.50 per page. For this reason, the current ordinance governing copy fees in Johnson County appears to exceed the standards for "actual cost" under Indiana Code section 5-14-3-8(d).

Johnson County did, however, make some attempts to amend their ordinance prior to your complaint. Unfortunately, these efforts were not made before the effective date of the 1999 amendments to Indiana Code section 5-14-3-8(d). The Johnson County Council and its attorney are aware of the problems created by this delay and it appears that effort will be made to not only change the county ordinance to conform to the current version of Indiana Code section 5-14-3-8 (d), but also to provide reimbursement to any person who paid the \$0.50 per-page copy fee from July 1, 1999 to the effective date of the new ordinance. While the Johnson County Council should have amended its copy fee ordinance prior to July 1, 1999, their efforts in response to your complaint are commendable.

CONCLUSION

It is my opinion that the per-page copy fee set by Johnson County Ordinance 98-2, exceeds the standard for "actual cost" as defined at Indiana Code section 5-14-3-8(d), as amended and effective July 1, 1999.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: The Honorable Pam Young, Johnson County Council
The Honorable Deborah Shutta, Johnson County Auditor
The Honorable Douglas Lechner, Johnson County Surveyor
Mr. Phil Wilson, Johnson County Attorney