



STATE OF INDIANA

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May 25, 2016

Mr. Charles Driggers
Via email

Re: Informal Inquiry 16-INF-12; Copy fees for court records

Dear Mr. Driggers:

This is in response to your informal inquiry regarding whether the copy fee imposed by the St. Joseph County Clerk's office ("Clerk") was proper. I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of Indiana law, Indiana Code § 33-37-5-1(b).

BACKGROUND

You requested from the Clerk a number of documents from a September 15, 2013 hearing including:

1. A copy of the Court Calendar
2. A copy of the sign-in sheet used by the Court
3. A copy of the entire flat file contents regarding this cause number including all pleadings and other court filings by the respective parties.
4. Copy of the Court bailiff's notes on the court calendar and copies of all court orders.

You seek a determination as to whether a court reporter may charge a \$1.00 per page copy fee under Indiana Code § 33-37-5-1(b).

ANALYSIS

Indiana Code § 33-37-5-1 reads in full.

(a) This section applies to a document fee for preparing a transcript or copy of any record. However, this section does not apply to either of the following:

- **(1)** The preparation or copying of a record:
 - **(A)** through the use of enhanced access under IC 5-14-3; or
 - **(B)** by a governmental entity using an electronic device.

- (2) The transmitting of a document by facsimile machine or other electronic device.
- (b) Except as provided in subsection (c), the clerk shall collect a fee of one dollar (\$1) per legal size or letter size page, including a page only partially covered with writing.
- (c) The legislative body of a county may adopt by ordinance a schedule of document fees to be collected by a clerk under this section. If an ordinance has been adopted, the clerk shall collect document fees according to the schedule. However, the document fee collected by the clerk under this subsection may not exceed one dollar (\$1) per legal size or letter size page, including a page only partially covered with writing.

You note this provision does not apply to the copying of a record by a government entity using an electronic device. Ms. Rethlake informed you the copies were made from the court's original calendar using a dot matrix printer. You contend because the documents were printed out and because a printer is an electronic device, the \$1.00 fee is improper.

The term "electronic device" is not defined within the Access to Public Records Act (APRA) or Title 33, Article 37. While a printer is indisputably an electronic device, holding that courts cannot charge fees for copies made using a copier or printer would render the statute meaningless. It is my interpretation the phrase "preparation or copying of a record by a governmental entity using an electronic device" refers to electronic copies. I interpret the statute to prevent a court from charging an individual for any form of electronic transmission of documents, i.e. scanning and emailing. Indiana Code § 33-37-5-1(a)(2) prevents a court from charging a fee creating a physical copy and transmitting that copy electronically. Indiana Code § 33-37-5-1(a)(1) works similarly and prevents a court from creating a copy of the file on a computer and charging you to put it on your thumb drive or other storage medium. Indiana Code § 33-37-5-1 prevents the charging of fees, because it is a mere stroke of the key for the court to transfer the file when it remains in electronic format.

You did not receive the records in an electronic format. You admit that you received tangible paper copies. Therefore, it is my interpretation the prohibition in Indiana Code § 33-37-5-1(a) does not apply in this situation and you were properly charged a fee of \$1.00 per page.

The true exception I take with this circumstance is the Clerk is charging the \$1.00 per page for documents of which the Clerk is not the intended custodian. By its admission, the Court itself prepared the Court calendars, the sign-in sheet and the bailiff's notes and "delivered to the Clerk." This totaled 188 of the 334 pages for which you were charged.

The Clerk of Courts is a Constitutional administrative office. *See Indiana Constitution Article 6.* Although it is inextricably intertwined with the judiciary, it is not a judicial office, but rather a separately elected position. The Clerk is the official custodian of the Court's judicial docket and other records germane to the Clerk's official duties under Indiana Code § 32-33, but it is not the custodian of the Court's administrative or operational public records. Funneling documents through the Clerk does not increase their value from the \$.10 per page cap in the APRA to \$1.00 a page. Had you sought the

documents directly from the Court or its staff, it could only charge you \$.10 per copy. Therefore, it is my Opinion the documents prepared by Court staff which would not be a Clerk's public records but for your request, should only carry a copy fee of \$.10 per page.

Please do not hesitate to contact me with any further questions.

Best regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: Mr. Mitchell Heppenheimer, Esq.