

September 12, 2003

Mr. John H. Harrison
113 Harrison Drive
Vincennes, Indiana 47591

Mr. Garry L. Hall
508 Main Street
Bicknell, Indiana 47512

Mr. Jerry Blice
30 N. 5th Street
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Mr. Patrick Lenahan
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Mr. Richard Poole
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Mr. Jeffrey Laskey
2002 McDowell Road
Vincennes, Indiana 47591

Mr. Ken Snider
519 N. Second Street
Vincennes, Indiana 47591

Re: *03-FC-74*; Allegation of Excessive Copy Fees

Dear Mr. Harrison:

This is in response to your formal complaint, which was received in this office on August 14, 2003. In it, you allege that the Knox County Board of Commissioners (the "County Commissioners") has violated the Indiana Access to Public Records Act ("APRA"). Specifically, you allege that the County Commissioners has violated the APRA by establishing copy and facsimile fees in excess of the actual cost of copies and facsimiles. I contacted the County Commissioners in the care of Mr. Bruce A. Smith regarding your complaint, but I have received no response.

For the reasons set forth below, it is my opinion that the County Commissioners do not have authority to establish copy and facsimile fees.

BACKGROUND

According to the documents you provided on July 21, 2003, the County Commissioners adopted Resolution No. 2003-9A, Resolution Establishing Copy and Facsimile Fees for Agencies of Knox County, Indiana (the "Resolution"). In it, the County Commissioners purported to establish fees at One Dollar (\$1) per page for all copies, One Dollar (\$1) per page for all local facsimile transmissions, and Two Dollars (\$2) per page for all non-local facsimile transmissions.

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." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The fiscal body at the local level may charge a copying fee for photocopies under Indiana Code section 5-14-3-8(d). Indiana Code section 5-14-3-8 provides that the "fiscal body of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the . . . copying . . . of documents." The fiscal body is defined as "county council, for a county not having a consolidated city." Ind. Code § 36-1-2-6(1). Because the APRA provides that the fiscal body is to establish fees, it is my opinion that the copy fee resolution passed by the County Commissioners is invalid for purposes of establishing the copy fees.

As an aside, the APRA provides that the copying fee must not exceed the actual cost, which is defined as "the cost of paper and the per-page cost for use of [the] copying . . . equipment and does not include labor costs or overhead costs." Ind. Code § 5-14-3-8. It is also my opinion that the fees purportedly established by the County Commissioners likely exceed actual cost of copying and faxing public records. If Knox County can show that the fees set forth in the resolution are the actual cost of the paper and the use of the copying equipment, then it is my position that the amount set forth in the resolution would not violate the APRA if passed by the appropriate agency.

CONCLUSION

It is my opinion that the Knox County Commissioners do not have authority to establish the copying fee pursuant to the Indiana Access to Public Records Act. Therefore, it is my opinion that a resolution by the County Commissioners is invalid for the purpose of establishing the copy fees as required under the Indiana Access to Public Records Act.

Sincerely,

Sandra K. Barger
Acting Public Access Counselor

Cc: Mr. Bruce Smith, Knox County Attorney