

February 1, 1999

Mr. George L. Kirkby
3160 Pulaski
Hobart, Indiana 46342

Re: PAC Opinion 98-9; Access to Sheriff's Sale records.

Dear Mr. Kirkby:

You have asked whether public records, in particular the court orders and praecipes concerning Sheriff's Sales of foreclosed, mortgaged real estate are subject to disclosure upon request. You have also questioned the \$1.00 per page copying fee that the Sheriff's Civil Office charges for such copies as contrary to the fee set by the Lake County Council. Lake County Sheriff John Buncich, through his attorney, John P. Bushemi, has responded to your concern about access to public records and the copying fee. Copies of his responses are attached for your information.

It is my opinion that the court orders and any praecipes received for Sheriff's Sales are disclosable public records that must be available for inspection and copying once filed with the Sheriff's Civil Office. With respect to the copying fees charged by local units, it is the fiscal body for the unit that sets the copying fee and the Lake County Sheriff's Department may only charge the copying fee set by the Lake County Council.

Background

The following facts have been obtained from your letter and the Sheriff's responses. In your letter dated December 8, 1998, you stated that the Administrative Assistant to the Lake County Sheriff told you that records pertaining to Sheriff's Sales are not considered disclosable until they are published and posted for review by the general public. Mr. Bushemi has outlined a new procedure to be used in the Sheriff's Civil Office to ensure that the court orders to the Sheriff are immediately available, however, praecipes are not typically forwarded to the Sheriff. Copies of praecipes may always be obtained in the court files.

In addition to your original complaint, Mr. Bushemi's response prompted your letter of January 13, 1999. You expressed your concern that the \$1.00 per page fee charged for photocopies is contrary to the fee schedule enacted by the Lake County Council, which provides that the fee is \$0.50 per page. There is much dispute over the meaning of the term "actual cost" of photocopies, but it is clear that Indiana Code 5-14-3-8 provides that it is the local fiscal body, the county council, that must determine and set "actual cost" and provide a fee schedule for photocopies in county agencies. In a telephone conversation with Mr. Bushemi on January 21, 1999, he indicated that he was informed that the copying fee was \$1.00 per page. In a letter dated January 25, 1999, Mr. Bushemi confirmed that he has advised the Sheriff's Office to charge the fee set by county ordinance, \$0.50 per page.

Analysis

Access to Records Concerning Sheriff's Sales

The Indiana Access to Public Records Act, Indiana Code 5-14-3 *et al*, (hereinafter, the "APRA,") defines "public record" to include "any writing, paper, report . . . or other material that is created, received, maintained, used or filed by or with a public agency." ind. code α 5-14-3-3. All public records may be inspected and copied except as provided under Indiana Code 5-14-3-4. *See* ind. code α 5-14-3-3. Indiana Code section 5-14-3-4 provides for two categories of exemptions from disclosure; a public record may be confidential and not disclosable unless a court order is obtained and in other cases, an agency may have the discretion to disclose or not disclose a public record. All other public records must be disclosed.

In this case, the public records received and maintained by a county sheriff's department concerning the Sheriff's Sale of foreclosed, mortgaged real property under Indiana Code chapter 32-15-6 are at issue. County sheriffs are required to receive a copy of the order of sale and judgment of the court under Indiana Code section 32-15-6-6 and sell the property in the manner "most likely to bring the highest net proceeds." ind. code α 32-15-6-6.5(a). There is nothing in the APRA or the statutes governing these sales that would make the records received, maintained or created for a Sheriff's Sale confidential or subject to disclosure at the county sheriff's discretion. These public records, therefore, must be disclosed upon request.

According to Mr. Bushemi's letter, the Sheriff agrees that the documents received from the court, specifically the order of sale and judgment, are disclosable public records. In order to accommodate requests for this information between sales, the Sheriff's Civil Offices will keep binders of the orders as they are received and make them available upon request. This is an appropriate method of providing access to these public records. With respect to praecipes that may have been filed in the courts concerning these same matters, the Sheriff would only be required to permit access to those praecipes that are actually received by the Sheriff's Civil Offices. Access to the praecipes would be available in the court files if copies are not transmitted to the Sheriff's Civil Offices.

Fees

Another issue you raised was whether the Sheriff's Civil Offices could charge \$1.00 per page for photocopies of the public records concerning Sheriff's Sales when the county council's ordinance set the fee at \$0.50 per photocopy. Under Indiana Code 5-14-3-8(d), a local fiscal body, in this case the Lake County Council, is required to set a fee schedule for photocopies, certifications and facsimile transmissions that "may not exceed the actual cost of certifying, copying or facsimile transmission of the document." The term "actual cost" is not defined in the APRA, leaving the local fiscal body with discretion as to how to set these fees.

In 1984, the Lake County Council adopted an ordinance, number 991A, setting forth the per page copying fee for county agencies as \$0.50 per copy in all instances in which a copying fee has not been set by state statute. A copy of that ordinance is enclosed for your reference. Although the Sheriff's Department originally quoted a \$1.00 per page copying fee, Mr. Bushemi's letter of January 25, 1999 confirms that the Department will comply with the fee set by county ordinance.

Conclusion

It is my opinion that the court orders and any praecipies received for Sheriff's Sales are disclosable public records that must be available for inspection and copying once filed with the Sheriff's Civil Office. A county agency, including a Sheriff's Department, must comply with the per-page copying fee set by the local fiscal body.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: John P. Bushemi, Lake County Sheriff's Attorney