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#94089
NO.
STATE OF NEBRASKA
OFFICIAL
NOV 18 1994
DEPT. OF JUSTICE

DATE: November 18, 1994

SUBJECT: Copying of Public Records

REQUESTED BY: Senator Brad Ashford

WRITTEN BY: Don Stenberg, Attorney General
Steve Grasz, Deputy Attorney General

You have requested the opinion of this office concerning the copying of public records pursuant to requests from members of the public. Specifically, a request has been made for copies of certain travel records. You have inquired whether Nebraska's public records statutes set forth only the minimum requirements regarding public records, or whether they are the exclusive authority as to the handling of public records requests.

Applicable Law

The relevant Nebraska statute governing public records is set forth at Neb. Rev. Stat. § 84-712 (1987).

> Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in section 84-712.01, are hereby fully empowered and authorized to examine the same, and to make memoranda and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business.

(emphasis added).

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Analysis

The basic language of this statute has been in effect since 1866. It was amended in 1961 to provide that the public may make memoranda and abstracts from public records during normal business hours. LB 505 (Neb. Laws 1961). Thus, it is clear that interested persons may make "memoranda and abstracts" from public records. However, it is the longstanding opinion of this office that § 84-712 does not require a public agency to make copies of public records or to mail or otherwise deliver copies of public documents to individuals. It is also our long-standing view that § 84-712 does not require a public agency to review documents and create abstracts or other lists. Opinion of the Attorney General No. 87104 (Oct. 27, 1987). Public officials must, however, provide a certified copy of public records upon request and upon payment of a fee, pursuant to Neb. Rev. Stat. § 25-1280 (1989).

The heart of your question really involves the meaning of the phrase "memoranda and abstracts" and whether the public may also make copies of documents. Although no Nebraska court has addressed this issue, it is our view that the statute's provision allowing "memoranda and abstracts" at no cost should not be construed to prohibit photocopies at the public's expense. This is especially true with regard to records of expenditures of public funds. ***See*** § 84-712.01 (requiring liberal construction of public records statutes where fiscal records of a public body are involved).

The United States Supreme Court has stated, "It is clear that the courts of this country recognize a general right to inspect and copy public records and documents. . . ." ***Nixon v. Warner Communications, Inc.***, 435 U.S. 589, 98 S.Ct. 1306, 1312, 55 L.Ed.2d 570 (1978). ***See also Fuller v. State ex rel. O'Donnell***, 154 Fla. 368, 17 So.2d 607 (Fla. 1994) ("The best reasoned authority . . . holds that the right to inspect public records carries with it the right to make copies."); 76 CJS *Records* § 61 at 130 ("The courts recognize a general common-law right to copy public records.").

Thus, while an agency is under no obligation to make photocopies of public records, it should generally permit a member of the public to make copies on their own and at their own expense. This could be accomplished by use of a portable copier. It should also be noted that an agency is not prohibited from making its copier available for this purpose, especially where the agency is authorized to receive reimbursement for photocopies. However, an agency is not obligated to tie up its equipment or its employees time making copies for private individuals. Agencies are also not required to allow documents to leave their premises for copying. Furthermore, it is our opinion that agencies are not required to allow photocopying of delicate or archival originals where the

document could be damaged by copying. ***See Adams County Abstract Co. v. Fisk***, 117 Idaho 513, 788 P.2d 1336, 1339 (Idaho App. 1990) and the cases cited therein recognizing the right of the custodian of public records to formulate regulations necessary to protect the safety of their records.

In sum, an agency receiving a public record request should comply with the letter and spirit of the public policy favoring open government and access to public records. The public should be accommodated, within reason, while minimizing disruption to the agency.

Sincerely yours,

DON STENBERG
Attorney General

Steve Grasz

Steve Grasz
Deputy Attorney General

Approved By:

Attorney General

3-1767-3