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JON BRUNING
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

September 26, 2013

Gary Owens
8702 Pinkney Street
Omaha, NE 68134

RE: *File No. 13-R-123; Sarpy County District Court; Gary Owens, Petitioner*

Dear Mr. Owens:

We are writing in response to your correspondence received by this office on September 11, 2013. Specifically, you have requested our assistance in determining whether the fees charged by the Sarpy County District Court for certain copies of public records were appropriate under Neb. Rev. Stat. § 84-712 of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008 & Cum. Supp. 2012) ("NPRS"). As is our normal practice with such requests, we contacted the party against whom the complaint was made and requested a response. In this case, we directed your correspondence to Carol Kremer, Clerk of the Sarpy County District Court. On September 18, 2013, we received correspondence from Deputy County Attorney John W. Reisz, who responded on behalf of Ms. Kremer. We considered your correspondence to be a petition under § 84-712.03 of the NPRS. Our findings in this matter are set forth below.

RELEVANT FACTS

Our understanding of the facts in this case is based on the information contained in your petition and the county's response. You indicate that on September 10, 2013, you requested a copy of a document you had just filed with the clerk of the district court. You indicate that the clerk took the paper, made a copy and gave it to you. You were charged $.75 for the copy (Receipt No. 383142). Also on September 10, you filed a public records request with the clerk. You requested a copy of this letter, which was provided to you. You were charged $.75 for this copy (Receipt No. 383143). You indicate that "[t]he Clerk has denied my numerous complaints about these outlandish copying charges and states that is [the] customary fee for copies and that is what the Sarpy County District Court tells us to charge." Petition at 2.

According to Mr. Reisz, the Sarpy County Board set the current fee schedule for photocopies in 1991. According to the meeting minutes documenting this action, the county board lowered the "copy cost of non-certified public documents to $.75 first copy, $.25 for each additional copy relating to the first copy, effective July 1, 1991." This schedule has not been revised since that time. Mr. Reisz also indicates, from discussions with the clerk's office staff, that you were provided numerous copies of records without charge prior to the transfer of the civil file from Sarpy to Douglas County in early July. Finally, Mr. Reisz represents to us that the county will adopt any fee amount deemed appropriate by this office.

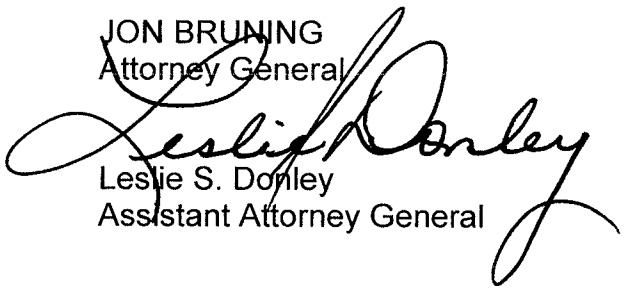
DISCUSSION

The longstanding enforcement policy of the Office of the Attorney General is not to question copying charges of up to $.25 per page for copies of public records, in addition to the other allowable charges set out in § 84-712.[1] We further note that the county courts in this state are entitled to charge $.25 per page for providing photocopies. *See* Neb. Rev. Stat. § 33-126.05 (2008). Since the Sarpy County Attorney's Office has represented to us that the county will follow our direction as to the appropriate costs for photocopies, an analysis as to whether its current fee schedule constitutes "actual added costs" is unnecessary. Therefore, in keeping with our current enforcement policy, the Clerk of the District Court is directed to charge up to $.25 per page for photocopies, effective immediately.

If you disagree with our legal analysis set out herein, you may wish to consult with your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes.

Sincerely,

JON BRUNING
Attorney General



Leslie S. Donley
Assistant Attorney General

cc: John W. Reisz

49-1026-30

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[1] Section 84-712 of the Nebraska Public Records Statutes was recently amended with the enactment of LB 363 during the 2013 legislative session. 2013 Neb. Laws LB 363, § 1 (effective date September 6, 2013).