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June 19, 2012

Mr. R. Scott Japp
4752 County Road 15
Arlington, NE 68002

Dear Mr. Japp:

This letter is in response to your email correspondence dated June 4, 2012, regarding the Papio-Missouri Natural Resource District ("Papio NRD") and the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Cum. Supp. 2010, Supp. 2011). We received a hard copy of your correspondence on June 5, 2012, and we considered your correspondence to be a petition under § 84-712.03. Our response to your petition is set out below.

FACTS

Our understanding of the facts in this case is based upon your letter and the materials which you provided to us with it. We also discussed this matter with John Winkler, General Manager of the Papio NRD, and with Paul Peters, counsel for the Papio NRD.

You are currently serving as a member of the Board of Directors of the Papio NRD, and in that capacity you have made a number of requests to staff of the NRD for information. However, the Chairman of the NRD Board, Mr. Kolowski, apparently instructed NRD staff not to expend any additional time/or resources making copies or researching your requests for information without his approval. You took up that situation with this office, and we informed you that our authority over governmental subdivisions in Nebraska, including natural resource districts, is limited, for the most part, to matters arising under the Open Meetings Act or the Public Records Statutes. We have no general supervisory authority over governmental subdivisions in Nebraska.

Accordingly, on May 20 and May 24, 2012, you made several requests for copies of public records to the Papio NRD under the Nebraska Public Records Statutes. We understand that you made those records requests in your capacity as a private citizen or interested person, and *not* as a member of the Papio NRD Board. On May 25, 2012, Mr. Winkler responded to those public records requests by again stating that Papio NRD staff had been instructed not to expend any time and/or resources making copies

or researching requests for public records without Mr. Kolowski's approval. Mr. Winkler also indicated to you that district files "have been and are always available for review/inspection by the public and directors upon request." The response from Mr. Winkler precipitated your petition to this office.

ANALYSIS

We will begin our analysis with a discussion of the basic provisions of the Nebraska Public Records Statutes. Those statutes generally allow interested persons in Nebraska the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts therefrom, and to obtain copies of records in certain circumstances. However, we have consistently taken the position that those statutes do not require public officials to answer questions, or to create records which do not otherwise exist. In addition, while the Nebraska Public Records Statutes do provide for access to public documents, they are not absolute, and they also provide for exceptions to disclosure by express and special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983). For example, § 84-712.05 sets out a number of categories of documents which may be kept confidential from the public at the discretion of the agency involved

The Public Records Statutes also allow the custodian of public records to charge a requester for the actual cost of providing copies of public records. In that regard, we discussed the parameters of permissible charges for photocopies of public records in our Op. Att'y Gen. No. 01029 (August 2, 2001). In that opinion, we concluded, based upon the legislative history of § 84-712, that the "actual cost" for photocopies of public records under the Public Records Statutes included the obvious costs of copy paper, toner, copy machine rental and so forth, *plus* the costs of staff time for public employees "to pull the records, separate out any portions of the records that may be kept confidential, copy the records and return them to the proper files." *Id. at* 2. Under § 84-712 (3)(d), the custodian of public records may also require the requester of copies of particular public records to provide a deposit, up to the entire amount, before beginning a search for records if the cost of fulfilling the request is estimated, in good faith, to exceed $50.00.

Finally, we have also consistently taken the position that the Public Records Statutes do not require governmental agencies in Nebraska to disrupt important governmental operations in order to respond immediately to a public records request which is extensive or which requires a review of voluminous records. Under those circumstances, governmental agencies may take a reasonable amount of time to respond to records requests so as to not unduly disrupt governmental functions.

In the present instance, you made your request to the Papio NRD as a private citizen or "interested person" under the Public Records Statutes, and we believe that you are entitled to receive copies of the records which you requested. We have

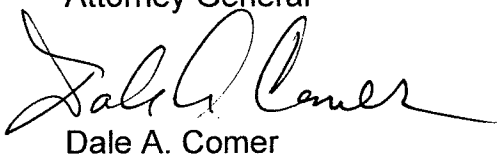
discussed this matter with counsel for the NRD, and it is our understanding that you will be provided with copies of the records which you requested in conformance with the Public Records Statutes. However, since you requested copies under authority of those statutes, the Papio NRD can provide you with copies in a manner consistent with those statutes. In other words, the Papio NRD can charge you for the actual cost of providing the copies and require a deposit for providing those copies if appropriate. The Papio NRD can also provide you with those copies in a reasonable time frame consistent with the complexity of the records search required, and the Papio NRD can assert any exceptions to disclosure established by statute.

Since it is our understanding that you will now be provided with the copies of public records which you seek under the Public Records Statutes, it does not appear that you have been improperly denied access to public records. For that reason, there is no need for further action by this office, and we are closing this file.

If you disagree with the analysis set out above, 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



Dale A. Comer
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Chief, Legal Services Bureau

cc. Paul F. Peters

05-384-30