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November 2, 2012

VIA E-MAIL AND
REGULAR U.S. MAIL
Geri Card
6625 Road 155
Oshkosh, NE 69148

Philip E. Pierce
Garden County Attorney
P.O. Box 530
Oshkosh, NE 69154-0530

RE: *Continuation of File No. 12-R-105; Garden County Board of Commissioners; Geri Card, Complainant/Petitioner and File No. 12-R-119; Garden County Board of Commissioners; Geri Card, Petitioner*

Dear Ms. Card and Mr. Pierce:

We are writing in response to both of your letters to the undersigned, dated July 24 and July 27, 2012, respectively. In our previous correspondence dated July 24, 2012, we asked Mr. Pierce to provide this office, in as much detail as possible, a breakdown of the 50 cents per page cost for copies. Mr. Pierce responded as follows:

> My office made an estimate of the average cost per photocopy based on the last year costs as follows:
>
> a. Lease, toner, maintenance, paper $.10
> b. Building area usage, electricity, hearing, etc. $.02
> c. Having the machine available—unknown
> d. Sales taxes—7%
> e. Average wage of Clerk Employees at 150% to cover benefits, retirement, etc. $.38 per minute
> f. Estimated or average time for an employee to make a copy of 1 minute

Consequently, based on this information, the Board of Commissioners approved Resolution No. 2012-07-2 on July 23, 2012. This resolution contained the following fees:

Photocopies made by courthouse staff	$.54 each (price include sales tax)
Photocopies made by customer	$.27 each (price include sales tax)
Mail handling fee plus postage	$1.00 handling fee plus postage
Scanned and emailed copy	$1.00 each copy
Faxing	$2.00 first page, $1.00 each additional page
Certified Copy	$1.50 each page

As previously indicated, Neb. Rev. Stat. § 84-712(3)(b) (Supp. 2012) of the Nebraska Public Records Statutes authorizes public entities to charge a fee for providing copies of public records. Specifically, the fee cannot "exceed the actual cost of making the copies available." We have carefully considered the information provided by the county, and believe that it has provided an adequate explanation to our inquiry as it relates to photocopies made by staff. In this regard, we cannot say that Garden County has not justified the charge involved. Consequently, with respect to photocopies of public records made by courthouse staff, we believe that the county may charge *50 cents* per page.

However, we do take issue with the four cent and two cent sales tax appended to the fees for photocopies. According to Mr. Pierce, at some juncture during this process, the county discovered that it had "failed to collect and pay sales taxes on the sale of photocopies." He indicates that the Nebraska Department of Revenue was contacted by the county treasurer, who confirmed that sales taxes should have been collected and paid. Mr. Pierce advises that the county has requested "the penalty and interest costs to correct this" purported oversight.

We disagree with this conclusion. We call your attention to Neb. Rev. Stat. § 77-2704.42 (2009), which provides:

> Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of copies of public records as defined in section 84-712.01, except those documents developed, produced, or acquired and made available for commercial sale to the general public if the price or reproduction cost of the document is not fixed by state law, rule, or regulation.

Clearly, the Nebraska Legislature has exempted the sale of copies of public records, as contemplated in this instance, from sales and use taxes. As a result, we believe that the county should immediately refrain from charging sales tax on these transactions.

CONCLUSION

It appears to us that the parties involved have reached a consensus on these matters. It is our understanding the Ms. McKeeman is placing more meeting information on the Garden County website, and e-mails the "meeting packet" to a colleague of Ms. Card at info@gardencountyadvocate.org. We appreciate Ms. McKeeman's efforts in this regard. Consequently, since no further action from this office is necessary, we are closing these files.

Finally, while Neb. Rev. Stat. § 84-712(3)(b) allows public bodies to charge for making copies of public records available, it does not authorize fees which exceed the *actual costs* for producing the copies. In other words, this statutory provision should never be construed as a revenue stream for the public body involved. We would ask that county officials keep this mind when the issue of fees is discussed in the future. We would also remind the parties of the underlying purpose of these statutes, as stated in Att'y Gen. Op. No. 01029 (August 2, 2001) at 3:

> Finally, it should be remembered that the purpose of the Nebraska Public Records Statutes is to make public documents readily available to Nebraskans. In keeping with the spirit of the public records laws, it is altogether appropriate and desirable for public officials to respond to requests for copies of public documents without charging a fee or by charging a nominal fee.

Sincerely,

JON BRUNING
Attorney General

Leslie S. Donley
Assistant Attorney General

cc: Commissioner Radke
Commissioner Shearer
Commissioner Cofrield
County Clerk McKeeman

49-914-30