



STATE OF NEBRASKA
Office of the Attorney General

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February 21, 2024

Via email at [REDACTED]
Robert J. Borer

RE: *Public Record Matter Involving the Secretary of State's Office*
Our File No. 20241026

Dear Mr. Borer:

This letter is in response to your correspondence emailed to this office on February 10, 2024, and received on February 12, in which you requested our review of the fee charged by the Secretary of State's Office (SOS) to obtain a copy of the state's voter list. We construed your email to be a petition under the provisions of the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2014, Cum. Supp. 2022). On February 16 and 20, the undersigned discussed your petition with SOS officials. We have now completed our review of this matter, and our findings are set forth below.

RELEVANT FACTS

On February 5, 2024, you emailed the SOS Elections Division and Deputy Secretary of State Colleen Byelick requesting "a digital copy of the most recent state voter rolls." SOS Public Records Officer Ashlee McGill timely responded to your request on February 9. She indicated that it was the practice of her office to require a new voter file affidavit and fee on an annual basis. She requested that you submit a new request form and pay the \$500 fee to obtain the requested file. Ms. McGill represented that "[u]pon payment of the fee and approval of the voter file affidavit, supplemental monthly requests for the voter file may be made for up to a year." It is our understanding that you provided the required affidavit, paid the fee and received a CD containing the names, addresses, etc. of 1,227,587 registered voters on or about February 12.

DISCUSSION

The basic rule for access to public records in Nebraska is set out in Neb. Rev. Stat. § 84-712(1) (2014). That provision states that

[e]xcept 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 (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

(Emphasis added.) Under the portion of § 84-712 emphasized above, other statutes may exist that govern your access to public records. In the present case, Neb. Rev. Stat. § 32-330(2) (Cum. Supp. 2022) governs access to voter lists, including the allowable costs to produce them:

The Secretary of State, election commissioner, or county clerk shall make available a list of registered voters that contains no more than the information authorized in subsections (3) and (7) of this section and, if requested, a list that only contains such information for registered voters who have voted in an election held more than thirty days prior to the request for the list. *The Secretary of State, election commissioner, or county clerk shall establish the price of the lists at a rate that fairly covers the actual production cost of the lists, not to exceed three cents per name. . . .*

(Emphasis added.)

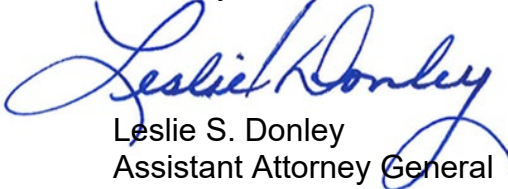
Section 84-712.03(1)(b) requires us “to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections, including whether the fees estimated or charged by the custodian are actual added costs or special service charges *as provided under section 84-712.*” Consequently, since § 32-330 sets out the parameters for the price of a voter list, determining the propriety of the \$500 fee is outside the scope of our review under the NPRS. However, we understand that in accordance with SOS practice and pursuant to your request, SOS staff will be providing you the voter list on a monthly basis by certified mail for one year from the date of your affidavit at no additional charge.

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Since we have determined that we lack the statutory authority to review the price charged for the initial request for a voter list, no further action by this office is warranted and we are closing our file. If you disagree with the conclusion reached above, you may wish to consult with your private attorney to determine what other remedies, if any, may be available to you under the NPRS or any other provision of law.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Colleen Byelick (via email only)

49-3460-30