



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1996

The Honorable Richard J. Roach
Roberts County Attorney
110 South Main
Miami, Texas 79059

Letter Opinion No. 96-082

Re: Whether a county clerk may
impose various fees for copying public
records (ID# 34701)

Dear Mr. Roach:

You explain that there is one abstract company in Roberts County, which has been allowed to place its own photocopier in the county clerk's office and to use the machine daily to make copies of records for its business.¹ The company does not pay anything to the county either for the space or for the electricity that it uses. An abstract company from an adjacent county has, in the past, used the county's photocopier to make copies of government records at a fee of a nickel a page. The newly elected clerk now prohibits the public, including the second company, from using the county's photocopier but makes copies as requested, charging one dollar per page for copies of documents. You ask five questions about fees charged by the county clerk and the duties of that office.

First, you ask whether the one-dollar fee charged to the second company is authorized by statute. Section 191.006 of the Local Government Code provides that "[a]ll records belonging to the office of the county clerk to which access is not otherwise restricted by law or by court order shall be open to the public at all reasonable times." It also authorizes a member of the public to copy any of the records. Section 118.011, Local Government Code, establishes fees, other than court fees, to be charged by the county clerk. The legislature amended section 118.011 in 1993 by adding subsection (a)(4), which establishes a one-dollar fee for each page or part of a page for noncertified papers. *See* Act of May 26, 1993, 73d Leg., R.S., ch. 554, § 1, 1993 Tex. Gen. Laws 2061, 2061; *see also* Local Gov't Code § 118.0145 (stating that fee under 118.011 for noncertified papers is for issuing noncertified copy of each page or part of page of document). Thus the statute now expressly requires the clerk to charge one dollar per page or part of a page for issuing noncertified copies of papers. *Cf.* Attorney General Opinions DM-166 (1992) at 6, JM-757 (1987) at 6, H-552 (1975) at 4 (all stating that no statute specifically sets fee for noncertified copies).

¹The requestor presents this information as background to his questions and he does not inquire about the placement of the copier in the clerk's office. In Attorney General Opinion JM-757 this office concluded that the county clerk must deal evenhandedly with various members of the public who wish to use portable copying equipment in the clerk's office. Attorney General Opinion JM-757 (1987) at 5.

Although you do not ask about charges for copies under the Open Records Act, Gov't Code ch. 552, we take this opportunity to resolve a conflict between that act and section 118.011, Local Government Code. Section 552.265 of the Government Code limits the cost of copies obtained from a district or county clerk under the Open Records Act to not more than the actual cost of the copies, except for certified copies. That provision directly conflicts with the one-dollar fee mandated by section 118.011(a)(4). The rule of statutory construction that says where two statutes conflict, the one that was enacted at the later date prevails resolves this conflict in favor of section 118.011. See Gov't Code § 311.025; Attorney General Opinion JM-1237 (1990) at 4. Section 118.011(a)(4) was enacted in 1993 and section 552.265, Government Code, was enacted in 1989. See Act of May 26, 1993, 73d Leg., R.S., ch. 554, § 1, 1993 Tex. Gen. Laws 2061, 2061, and Act of May 29, 1989, 71st Leg., R.S. ch. 1248, § 16, 1989 Tex. Gen. Laws 4996, 5028. Thus, section 118.011 prevails over section 552.265, to the extent the latter statute applies to county clerks.

In your second question, you ask whether the clerk may charge a person a fee of one dollar per page where that person removes a document from the binder in which it is kept, makes copies on his own copy machine, and replaces the document. While section 118.011(a)(4) does not specify that the fee is for copies of documents, it is in fact a fee for the clerk's services in making copies. Section 118.024 of the Local Government Code establishes "full and free access" to documents in the clerk's office, while section 191.006 expressly permits a member of public to make copies of records in the office of the county clerk. See also Local Gov't Code § 118.0145 (fee for issuing noncertified copies). Where a person makes copies of records on the person's own copy machine, the clerk provides no services other than allowing the "full and free access" required by section 118.024. That section prohibits the clerk from charging for access to records. See *Permian Report v. Lacy*, 817 S.W.2d 175, 177 (Tex. App.--El Paso, 1991 writ denied).² Accordingly, the clerk may not charge a fee of one dollar per page when a person removes a document from the binder in which it is kept, makes copies on his own copy machine, and replaces the document.

²At issue in *Permian Report v. Lacy*, 817 S.W.2d 175 (Tex. App.--El Paso 1991, writ denied), was the reasonableness of rules adopted by a county clerk to regulate copying of land title records in her office. The trial court had found that the rules were reasonable and prudent but the appellate court held that some of them exceeded the clerk's authority under the statutes providing for full and free access and the right to copy. The court found invalid the rules requiring (1) payment for supervision provided by the clerk's office; (2) insurance to have access to the clerk's records; (3) an indemnity bond in order to copy public records; and (4) providing the clerk with a copy of microfilm made of court records at cost. *Id.* at 177. The appellate court upheld the trial court's order with respect to the remaining rules, which among other things allowed the clerk to impose reasonable and necessary requirements on a person to insure the safety of the records and maintain the efficiency of the office, allowed the clerk to decide reasonable times, days, and dates for copying, and authorizing the clerk to determine a reasonable space necessary to perform the copying.

In your third question you ask whether the clerk or county may charge a person for the use of office space and electricity with respect to the use of a privately owned copy machine located in the clerk's office. We think that the clerk may not charge for either the use of office space or for electricity. These amenities must be included in the basic right of access to the records, which section 118.024 requires to be both full and free. See *Permian Report*, 817 S.W.2d 175 177; *Tarrant County v. Rattikin Title Co.*, 199 S.W.2d 269, 270 (Tex. Civ. App.--Fort Worth 1947, no writ);³ *Tobin v. Knaggs*, 107 S.W.2d 677, 680 (Tex. Civ. App.--San Antonio 1937, writ ref'd);⁴ Attorney General Opinion H-552 (1975) at 3. While the public has the right to full and free access to the documents and may make copies on a privately owned copier without having to pay for space and electricity, the right to full and free access does not include the unlimited right to use private equipment or the right to leave a copy machine in the clerk's office. The clerk still has the right to enact reasonable rules to protect the documents and to regulate the flow of traffic in the office. *Rattikin*, 199 S.W.2d at 273; see also *Permian Report*, 817 S.W.2d at 177.

We combine our answers to your fourth and fifth questions. In your fourth question, you ask whether the clerk is authorized to charge a fee for removing a document to be copied from its binder and handing it to a person to copy on that person's own copy machine. In your fifth question, you ask what exactly does "issuing" mean. We believe that the fee prescribed for issuing copies of documents includes making the copies. Because the term "issue" is not defined in chapter 118, we rely on the common definition of the term. See Gov't Code § 311.011(a) (words in codes are to be read according to common usage). Webster defines "issue," used as a transitive verb, as "to put forth or distribute usually officially." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 643 (1990); see also Attorney General Opinion H-552 (1975) at 4 (discussion of verb "issue"). Thus, when a clerk issues a copy of a document, he will copy, or obtain a copy of the original, and deliver the copy to the person who requested and paid for it.

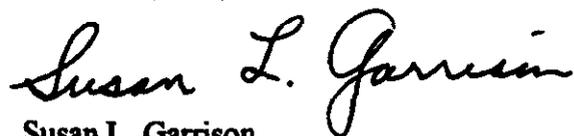
³In *Tarrant County*, the court held that there was no authority for a county clerk to charge an abstract company for office space provided in the courthouse while copying public records. The court noted that reputable abstractors should have free and unhampered access to the use of the public records in the clerk's office, subject to reasonable rules and regulations. *Tarrant County*, 199 S.W.2d at 273.

⁴The decision in *Tobin v. Knaggs*, 107 S.W.2d 677 (Tex. Civ. App.--San Antonio 1937, writ ref'd), recognizes a right to make photographic copies of deed records in the office of the county clerk.

S U M M A R Y

A county clerk shall charge one dollar per page for issuing a noncertified copy of each page or part of a page located in that office. That fee is authorized only where the clerk actually obtains the copy and submits it to the person who made the request and paid the fee.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison". The signature is written in black ink and is positioned above the typed name and title.

Susan L. Garrison
Assistant Attorney
Opinion Committee