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Honorable Willie Pearl Rice
Sumter County Probate Judge
Post Office Box 1040
Livingston, Alabama 35470

Public Records – Fees – Copies – Personal Property – Probate Judges

The regular copy fee may not be assessed if individuals use personal cameras or other electronic devices to make a copy of a public record.

The probate judge does not have the authority to refuse the use of personal cameras or other electronic devices for receiving copies or retrieving information from public records unless the camera or other electronic device unduly interferes with the operation of the office of the probate judge.

Dear Judge Rice:

The opinion of the Attorney General is issued in response to your request.

QUESTIONS 1 AND 2

Should the regular copy fee be assessed to individuals when they are allowed the usage of personal cameras or other electronic devices in making copies of public records or retrieving information as described in A.G. Opinion No. 2002-205?

If no fee is due, does the probate judge have the authority to refuse the use of personal

> cameras and copy machines or other electronic devices for receiving copies or retrieving information from the public records?

FACTS AND ANALYSIS

In your letter of request, you have asked for further clarification regarding A.G. Opinion No. 2002-205, which states that "a reasonable fee may be assessed to the public for the actual cost of providing copies or for retrieving information." Opinion to Honorable Mark D. Berson, Director, Bureau of Tourism and Travel, dated April 8, 2002, A.G. No. 2002-205.

Section 36-12-40 of the Code of Alabama provides that "[e]very citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by the statute." ALA. CODE § 36-12-40 (Supp. 2008). The Supreme Court of Alabama has defined the term "public writing," as used in section 36-12-40 of the Code of Alabama, to mean "such a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens." *Stone v. Consol. Publ'g Co.*, 404 So. 2d 678, 680 (Ala. 1981).

In an opinion to Honorable Tim Parker Jr., this Office stated the following:

> "If possible, a public agency should provide free copies of public records. However, if budgetary constraints prevent this, then a public agency may charge a nominal fee, if necessary, to cover its costs of providing copies of public records. One may inspect public records without a fee unless a substantial amount of time is required."

184 Op. Ala. Att'y Gen 27 (August 25, 1981). . . .

> "There is statutory authority for the collection of fees to defray costs of providing a citizen with information retained by public officers. Further, this office has

> issued several previous opinions that a reasonable fee may be charged for providing copies of records. A "reasonable fee" has been interpreted to mean the actual cost incurred in providing information to the public. Thus the fee charged should be limited to the actual cost of providing information to the public, so long as those costs are reasonable. An excessive fee should not be charged as the public's right to a copy of public records should not be restricted."

> 240 Op. Ala. Att'y Gen. 16 (July 17, 1995), 240 Op. Ala. Att'y Gen. 17 (July 20, 1995).

> Custodians for public records must provide free access to public records. If copies of records are requested, when necessary due to budget constraints, a reasonable charge may be assessed based upon a recoupment of actual costs of providing copies or for retrieving the information. Such charges cannot be imposed to restrict public access.

Opinion to Honorable Tim Parker Jr., Member, House of Representatives, dated June 12, 1998, A.G. No. 98-00161. Based on the foregoing, it is the opinion of this Office that the regular copying fee for public records cannot be charged to individuals using personal cameras or other electronic devices.

If a fee is being charged due to budgetary constraints, the Probate Court of Sumter County has the option of charging an information retrieval fee. *See Parker* at 3. This fee may be imposed on all members of the public regardless of the use of personal cameras or other devices based on the cost of retrieving the information, if there is such a cost that may be attributed to the retrieval of the records. *See* opinion to Honorable Michael L. Davis, Judge of Probate, Limestone County, dated April 26, 1985, A.G. No. 85-00328 (stating that the probate judge may not assess the fees set out in section 12-19-90(b) of the Code of Alabama when no service or assistance is rendered by an employee of the probate judge in researching, retrieving, or copying requested documents.)

Neither the State of Alabama nor the 11th Circuit has addressed the issue of whether a probate judge has the authority to refuse the use of

personal cameras and other electronic devices for receiving and making copies of public records. The Illinois Appellate Court, however, in *People ex rel. Gibson v. Peller,* found that photographs could be taken of public records because photographs are accurate, harmless, noiseless, and time saving. 34 Ill. App. 2d 372, 375 (Ill. App. 1962). The court also stated that photographs capture what is seen with the naked eye and that no one can be harmed by reproduction of records exactly as they exist. *Id.* The fact that more modern methods of copying are devised should not lessen the right given to the public to inspect and take a copy of the public records. *Id.*

Additionally, the Supreme Court of Alabama has said that section 36-12-40 of the Code of Alabama "is remedial and therefore should be liberally construed in favor of the public." *Water Works & Sewer Bd. of City of Talladega v. Consol. Pub., Inc.*, 892 So. 2d 859, 862 (Ala. 2004). The Supreme Court of Alabama has also stated that the right of the public to inspect and copy a public writing is broad and the exceptions thereto are narrow and limited. *Ex parte Gill*, 841 So. 2d 1231, 1234 (Ala. 2002). Thus, it is the opinion of this Office that the use of personal cameras and other electronic devices by the public may not be refused for use in copying public records.

This opinion, however, in no way gives members of the public unbridled access to duplicate records through the use of personal electronic devices. Instead, this Office has previously determined that reasonable limitations may be placed upon the public's access to records and the public's ability to use personal electronic devices to duplicate records. Specifically, in an opinion issued to the Honorable Elizabeth Hamner, this Office noted that use of personal copiers may be restricted to ensure that the operations of that such actions do not unduly interfere with the operations of the office. *See* opinion to Honorable Elizabeth Hamner, District Court Clerk, Tuscaloosa County, dated February 3, 1992, A.G. No. 92-00154.

CONCLUSION

The regular copy fee may not be assessed if individuals use personal cameras or other electronic devices to make a copy of a public record. The probate judge does not have the authority to refuse the use of personal cameras or other electronic devices for receiving copies or retrieving information from the public records unless the camera or other electronic device unduly interferes with the operation of the office of the probate judge.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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