

Question Submitted by: The Honorable Howard Cotner, Oklahoma House of Representatives

1982 OK AG 109

Decided: 04/12/1982

Oklahoma Attorney General

Cite as: 1982 OK AG 109, ___

¶0 The Attorney General is in receipt of your request for an opinion wherein you ask, in effect, the following question:
What rights and privileges do licensed abstractors have to utilize space in county courthouses?

¶1 The Oklahoma Statutes provide that the abstractor has a public duty to furnish abstracts to the public. Title 1 O.S. 10 (1971) provides that "All abstractors shall furnish abstracts . . . to persons applying therefore . . . without unnecessary delay...." and that the abstractor's certificate permits the abstractor "the free and unrestricted use" of county records for business purposes in furnishing the public abstracts.

¶2 Title 1 O.S. 2 (1971) provides that abstractors:

" . . . shall have *free access to the county records* of the several county offices, for the purpose of the prosecution of their said business of abstracting, and the compiling, posting and keeping up of their abstract books necessary for the proper conduct of their said business, under the direct supervision of the county officers having the legal custody of said records; and while handling and using said county records for any of the purposes of this chapter, the said abstractors, and their officers, agents or employees, shall be under the same obligation to protect and preserve said records as the several county officers who have the legal custody of same, and subject to the same penalties for a violation of such duty as said officers." (Emphasis added)

¶3 However, the public is also entitled to inspect public records for proper purposes, at proper times and in a proper manner. 51 O.S. 24 (1971). Therefore, the abstractor's access to these records cannot hamper the public's right to access.

¶4 Further, since the records are the responsibility of the county officers having legal custody thereof, such officers may prescribe reasonable rules regarding time and space in their respective offices, so that the officer and his employees, abstractors, and the public may exercise their equal rights and perform their duties. Atty. Gen. Op. No. 63-304. In fact, 1 O.S. 1 (1971) provides that the abstractor:

" . . . will not in any way interfere with, hinder or delay the several county officers in the discharge of their duties while using said records in the prosecution of said business of abstracting; . . ."

¶5 Section 1 further provides:

" . . . that the records shall in no case be taken from the county office to which they belong...."

¶6 Accordingly, the abstractors have "free access" to the use of the public records located in the State of Oklahoma, but such access is subject to reasonable rules and regulations which protect the records; which protect the public's use of these records; and which permit the county officers to discharge their duties. See Atty. Gen. Op. No. 63-304.

¶7 "Free Access" to records includes a suitable place to inspect records. The obligation of the County to a bonded abstractor is sufficiently complied with, if, considering the space available, the County Clerk furnishes desks or tables and chairs in a number sufficient to meet the requirements of the general public including abstractors. Atty. Gen. Op. dated February 21, 1958 addressed to James W. Berry. The decision of the County Clerk will ordinarily be controlling as to the sufficiency of the number of tables, desks and chairs necessary to serve the public including abstractors. *Id.* However, such a decision may not be so restrictive in nature as to actually constitute a denial of free and unhampered access to the records. *Id.*

¶8 Other jurisdictions have also held that sufficient space for "free access" to the public records should be free of charge to the abstractor and the public. In *Tarrant County v. Rattikin Title Co.*, 199 S.W.2d 269 (Tex. 1947) when the court decided to charge rent

for the space the abstractors used to fulfill their public duty, the court stated:

"... to allow appellant to collect rent for such space would destroy the spirit of the Statute granting free access to the public records." See *Shelby County v. Memphis Abstract Co.*, 140 Tenn. 74,203 S.W. 339 (1918).

¶9 Although rent should not be charged the abstractor or the public for a sufficient space to inspect the records, the 1958 opinion stated:

"While an abstractor is entitled, under the above referred to authorities . . . to such access to county records, *it is not believed that he has a 'right' to maintain an abstract office in the County Clerk's office.*

* * *

"In any event, an abstractor (or other citizen) is entitled only to the desk or tables, chairs and space which are reasonably necessary for examining and copying records.

"It follows from the above authorities that *no person may demand the right to occupy or control any space in the Clerk's office to the exclusion of other members of the public.*" (Emphasis added)

¶10 Accordingly, an abstractor may not occupy an exclusive space in the Clerk's office. An exclusive space would include the exclusive use of a space, desk, chair or any equipment in the county clerk's office. Such use of "exclusive space" by an abstractor or any citizen would violate Okl. Const., Article X, Section 17 which prohibits the investment of public funds in private enterprise. Atty. Gen. Op. No. 81-190; See *Lawrence v. Schellstede*, Okl., 348 P.2d 1078 (1960). Further, in absence of statutory authority, no part of the space in county offices designated for the use of county officers may be leased for private use. *Shelby County v. Memphis Abstract Co.*, 140 Tenn.74,203 S.W.339 (1918). See *State ex rel Remy v. Agar*, Okl., 559 P.2d 1235 (1977); *Green v. City of Norman*, Okl., 465 P.2d 58 (1969). County Official Offices and their equipment are public property held by the county in trust for public use. However, the County Commissioners may lease surplus county office space which is not needed for county purposes but such leases must be for fair consideration and are subject to termination and re-entry whenever the same is needed by the county for county purposes. See *Robinson v. Hal Johnson & Co.*, 206 Okl. 397,243 P.2d 657 (1952); *Board of County Commissioners v. Tulsa*, 202 Okl. 628, 217 P.2d 835 (1950); *City National Bank v. Incorporated Town of Kiowa*, 104 Okl. 161, 230 P. 894 (1924). Abstractors or the public who lease such space can not take the records to their leased office space from the county office to which they belong. 1 O.S. 1 (1971).

¶11 The right to access of the records also includes the right to copy the records. In 45 Am. Jur. 15, Right to Copy, it is stated:

"The right to inspect public records commonly carries with it the right to make copies, without which the right to inspect would be practically valueless." See Atty. Gen. Op. No. 80-207.

¶12 Public officials should have the opportunity to select any suitable copying equipment which will assure that the records will not be damaged, and to make suitable arrangements for the availability of such equipment. See *Matte v. City of Winooski*, 271 A.2d 830 (Vt.1970). The official custodian, who is in charge of maintaining and protecting the public documents, has the discretion to prescribe how these records are protected and to what mechanical process they will be subjected. Further, if the official provides copying equipment which includes the expense of paper, electricity, and service charges, these expenses should be charged (at a reasonable cost) to the public including the abstractor. If the individual is left to his own devices to make copies, the manner of copying should conform to reasonable rules and regulations, to the equal rights of others and to the prohibitions against exclusive use of space. See *Logan v. Mississippi*, 190 Miss. 479, 200 So. 716 (1941). Any incidental expense that might be incurred by such a copying device should be incurred by the individual using the device.

¶13 In addition, to the extent that Atty. Gen. Op. No. 63-304 and the Atty. Gen Op. dated February 21, 1958 addressed to James W. Berry are inconsistent with this opinion, they are overruled.

¶14 It is, therefore, the official opinion of the Attorney General that:

1. Abstractors have the right to "free access" of the county records which includes sufficient space and facilities to inspect or copy the records. 1 O.S. 2 (1971).
2. However, this right is subject to reasonable rules and regulations to protect the public's equal right to access, to protect the records, and to permit the county officers to discharge their duties. 51 O.S. 24 (1971); 1 O.S. 2 (1971); 1 O.S. 1 (1971).
3. This right does not give the abstractor the right to maintain an abstract office in the clerk's office or the right to maintain exclusive control over any space to the exclusion of the public because such a use of exclusive space would violate Okl. Const., Article X, Section 17 which prohibits the investment of public funds in private enterprise.
4. To the extent that Atty. Gen. Op. No. 63-304 and the Atty. Gen. Op. dated February 21, 1958 addressed to James W. Berry are inconsistent with this opinion, they are overruled.

Citationizer® Summary of Documents Citing This Document

Cite Name Level

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Citationizer: Table of Authority

Cite Name

Level

Title 1. Abstracting

Cite	Name	Level
1 O.S. 1,	Repealed by Laws 1984, HB 1850, c. 163, § 21, eff. November 1, 1984	Discussed at Length
1 O.S. 2,	Repealed by Laws 1984, HB 1850, c. 163, § 21, eff. November 1, 1984	Discussed at Length
1 O.S. 10,	Repealed by Laws 1984, HB 1850, c. 163, § 21, eff. November 1, 1984	Cited

Title 51. Officers

Cite	Name	Level
51 O.S. 24,	Repealed by Laws 1985, SB 276, c. 355, § 19, eff. November 1, 1985	Discussed