

January 25, 1993

Ms. Joan Cartan-Hansen
Idaho Press Club
P.O. Box 2221
Boise, ID 83701

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Public Records Copying Costs

Dear Ms. Cartan-Hansen:

You requested an opinion from this office regarding Idaho's Public Records Law, Idaho Code §§ 9-337 through 9-348. According to your letter, the City of Boise (the "City") has established a copying fee for reproducing public records of \$1.00 for the first page and 25¢ for each additional page thereafter. The City acknowledges that the fee is in excess of the actual cost for reproducing such records. Your question is whether such a fee violates Idaho Code § 9-338(8), which limits the allowable fees to be charged for making copies to "the actual cost . . . of copying the record if another fee is not otherwise provided by law." (Emphasis added.) The City takes the position that it is able to charge more than actual cost for copying public records because it has established a fee schedule by ordinance. Thus, the City contends that its fee schedule complies with Idaho Code § 9-338(8).

For the reasons set forth below, it is the opinion of this office that, regardless of the City's authority to pass ordinances, such an interpretation of Idaho Code § 9-338(8) would defeat the clear intent of the legislature in enacting the Idaho Public Records Law. The City has no authority to charge a fee in excess of the "actual cost" of reproducing requested records, and the practice of charging a fee of \$1.00 for the first page and \$.25 for each additional page violates the Idaho Public Records Law.

1. Legislative Intent

The intention of the legislature in enacting the Idaho Public Records Law is that all records maintained by state and local government entities must be available for public access and copying.

Every person has the right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.

Idaho Code § 9-338(1). One way to frustrate the clear policy established by the legislature in enacting the Public Records Law would be to charge exorbitant copying fees and thereby discourage requests for public records. The legislature anticipated this potential abuse and provided strict measures for determining the costs that may be charged. Idaho Code § 9-338(8) provides in pertinent part:

A public agency or public official may establish a copying fee schedule. The fee may not exceed the actual cost to the agency for copying the record if another fee is not otherwise provided by law. The actual cost shall not include any administrative or labor costs resulting from locating and providing a copy of the public record.

.....

The custodian may require advance payment of the costs of copying. Any money received by the public agency shall be credited to the account for which the expense being reimbursed was or will be charged, and such funds may be expended by the agency as part of its appropriation from that fund.

(Emphasis added.) The concept of the law is that examination and copying of public records is part of the public business, already funded by taxpayers. Therefore, fees for copying may not exceed the "actual cost" to the agency, and a public agency is expected to absorb labor and administrative costs. This office is informed that the general range of costs being charged by various state agencies and local governments is from four to ten cents per page. (Attached is a copy of a model policy for handling public record requests. Included therein is a worksheet for determining the actual cost for making a copy of a public record.)

2. Statutory Construction

In determining whether the term "law" as used in Idaho Code § 9-338(8) encompasses ordinances, the term should be given its plain and ordinary meaning unless a contrary purpose is clearly indicated in the statute. Bunt v. City of Garden City, 118 Idaho 427, 797 P.2d 135 (1990). The problem, however, that gives rise to this question is the difficulty in ascertaining the plain and ordinary meaning of the word "law," given the wide range in its accepted definition and application. As noted by the California Supreme Court many years ago:

There is no word in the language which, in its popular and technical application, takes a wider or more diversified signification than the word "law." Its use in both regards is illimitable.

Miller v. Dunn, 14 P. 27, 28 (Cal. 1887).

If construed broadly, the term "law" could extend to ordinances, resolutions and even rules and regulations adopted by state agencies. The statutory requirement in Idaho Code § 9-338(8) to limit copying fees to actual costs would then be largely discretionary. Every public agency coming within the scope of the Public Records Law could simply enact a "law" and be relieved of the express requirements stated in Idaho Code § 9-338. To the extent that so broad an interpretation of the term "law" permits evasion of the limitations found in Idaho Code § 9-338(8), a clear conflict exists between the expressed purpose and policy of the Idaho Public Records Law and such an expansive interpretation of the term.

Another general rule of statutory construction is that the strict letter of the statute will not be blindly followed when strict adherence to the language in the statute would frustrate the policy and purpose of the law and lead to an absurd result. 82 C.J.S. Stat. § 325. The Idaho Supreme Court enunciated this principle in In re Gem State Academy Bakery, 70 Idaho 531, 224 P.2d 529 (1950):

In determining the meaning of a statute, the particular mischief which it was designed to remedy and the history of the period and of the act itself may be considered.

. . . [A]nd intention may be ascertained, in doubtful cases, not only by considering the words used, but also by taking into account other matters, such as the context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, contemporaneous construction, and the like. In other words, the courts will not blindly follow the letter of a law, when its purpose is apparent, to consequences which are inconsistent with that purpose; and this would seem to be particularly true when the results of the literal interpretation, if adopted, would be absurd.

70 Idaho at 541-42 (quoting Eugene School Dist. No. 4 v. Fisk, 79 P.2d 262 (Oregon 1938) and Jordt v. California State Board of Education, 96 P.2d 809 (Cal. App. 1939)). As noted above, an expansive interpretation of the term "law" in relation to Idaho Code § 9-338(8) would frustrate the express purpose of the law and render that provision superfluous. It is certainly an absurd result when the use of one word within a provision eliminates the force and effect of that provision.

3. Legislative History

The legislative history for the Public Records Law enacted in 1990 provides some insight into Idaho Code § 9-338(8) and supports our ultimate conclusion. This subsection, along with most of the procedural provisions in the law, was drafted by an

interim legislative committee. The committee met on five occasions during the summer and fall of 1989.

It is certain from the minutes of the interim committee that the authority to charge a copying fee was intended to be limited to the actual costs of copying the document. Administrative and labor costs resulting from locating and providing a copy of the public record were definitely not to be included in the fee. The only explanation in the minutes for the language "if another fee is not otherwise provided by law" was the request by the Idaho Association of County Recorders and Clerks that the statutory fees for copying certain records by county clerks and recorders be left intact. (Legislative Council Committee on Public Records Minutes dated 6/28/89; testimony of Ned Kerr.) There is nothing in the minutes to suggest that a municipality, county or state agency could thwart this clear policy by rule or ordinance.

The minutes of the interim committee are consistent with then-existing law where the legislature, in several instances, had already provided a statutory fee schedule for copying charges. For instance, Idaho Code § 31-3201 provides that the clerk of the district court in any county shall charge \$1.00 per page for making a copy of any file or record. Similarly, Idaho Code § 31-3205 provides that a county recorder is allowed to charge \$1.00 per page for copies of recorded documents. Also, the county auditor may charge 20¢ per page for copying records. Idaho Code § 31-3207. The legislative history from the interim committee that drafted this provision supports the conclusion that the legislature intended to preserve these already established fees when it enacted the Idaho Public Records Law. Idaho Code § 9-338(8) accomplishes this goal while preventing conflict with the above-cited code provisions.

4. Conclusion

In using the term "law" in Idaho Code § 9-338(8), the legislature did not intend "law" to encompass ordinances. This is particularly true since the legislative history shows a clear intent that "actual cost" was to be the allowable fee charged for making copies of public records and the use of the term "law," if construed broadly, could defeat this intent.

The clear purpose in the Idaho Public Records Law is to open and promote easy access to public records. To allow a city to frustrate this purpose by charging excessive copying fees is clearly not within the intent of the law. To the extent that the literal reading of Idaho Code § 9-338(8) supports the City of Boise's authority to impose fees in excess of actual costs, the literal wording must yield to a reasonable interpretation of the statute. It is, therefore, the opinion of this office that the term "law" in Idaho Code § 9-338(8) references those statutes where the Idaho Legislature had already specifically provided established fees for copying public records, not to fee schedules created by ordinance, resolution or administrative rule.

I hope that this information has been helpful.

Yours very truly,

FRANCIS P. WALKER
Deputy Attorney General