

Opinion No. 57-102

May 15, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Hon. James C. Compton, District Attorney, Clovis, New Mexico

QUESTIONS

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May a charge of \$ 25.00 per month be imposed by counties upon abstract and title companies for such facilities as lights, telephone and janitorial services, to reimburse the counties therefor in connection with abstract and title companies inspecting and copying public records.

CONCLUSION

No.

OPINION

ANALYSIS

Section 71-5-1, N.M.S.A., 1953 Compilation is as follows:

"Every citizen of this state has a right to inspect any public records of this state except records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions and except as otherwise provided by law."

Section 71-5-2, N.M.S.A., 1953 Comp., is as follows:

"All officers having the custody of any state, county, school, city or town records in this state shall furnish proper and reasonable opportunities for the inspection and examination of all the records requested of their respective offices and reasonable facilities for making memoranda abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them for any lawful purpose."

Section 3 imposes rather severe penalties upon any official refusing to a citizen the right to inspect the public records as hereinabove provided.

You will observe that the statutes in question do not contain the answer to your query, nevertheless it is our opinion, and we so hold, that for the county to impose a charge of the above nature is to restrict the right of inspection granted by Sections 1 and 2. You

will observe that Section 2 accords the inspecting citizens reasonable facilities for making memoranda abstracts from the records. In our opinion such would include reasonable janitorial and utility services, and to impose a charge for the same would or could constitute a deprivation of the rights to the facilities.

This opinion should not be taken as holding that county clerks do not have the privilege, and indeed the duty, of making any reasonable rules and regulations designed to safeguard and protect the public records in their custody from damage, theft or alteration. Nor should it be taken as holding that the representatives of abstract or title companies have any right to monopolize the public records so as to exclude other citizens seeking to examine the same. See generally 80 ALR 760 et seq. We only hold that to impose the above charge would be to interfere with the statutory right of inspection, and further that the statutes do not authorize imposition of such charge.