

Opinion No. 68-90

September 3, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Lawrence H. Prentice Commissioner Department of Motor Vehicles State Capitol Santa Fe, New Mexico

QUESTION

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1. May the Department of Motor Vehicles abstract its public records and charge a fee for furnishing such abstract to private persons?
2. May the Department of Motor Vehicles impose a charge against private persons for use of files which are public records?
3. Does the general public have a right to examine files of this Department which are public records?
4. May this Department charge private persons a rental fee for the use of Department premises to examine and abstract public records?

CONCLUSION

1. No.
2. No.
3. Yes.
4. No.

OPINION

{*142} ANALYSIS

This office dealt with the assessing of administrative fees by the Department of Motor Vehicles in at least one prior opinion. Opinion of the Attorney General No. 60-189 issued October 13, 1960. In dealing with that issue, this office said:

However, since your office is the subject of an appropriation by the legislature and it must be assumed it was their [sic] intent that your office should operate within the limits of this appropriation, it is our opinion that the subsection [Section 64-2-20, N.M.S.A.,

1953 Compilation] may not be so construed as to authorize the assessment of such fees by staff employees. We believe that such authority should be specifically defined as was done in connection with the operation of an agent's office. (Opinion of the Attorney General No. 60-189 at 590).

This office finds no specific legislative authority which would allow your office to assess a fee for furnishing an abstract of a public record to a private person. The answer to your first question is no.

The answer to your second question is no. Our conclusion is based upon the above language.

The answer to your third question is yes. The controlling statute is Section 64-2-8, N.M.S.A., 1953 Compilation (P.S.). It states:

Records of the department of motor vehicles. -- A. All records of the department of motor vehicles, other than those declared by law to be confidential for the use of the department of motor vehicles, shall be open to public inspection during office hours. B. Disposition of obsolete records of the department of motor vehicles shall be made in accordance with the provisions of the Public Records Act [71-6-1 to 71-6-16, 71-6-17.1].

The answer to your fourth question is no. The question presents the same problem as is presented in questions numbered one and two.

By: Donald W. Miller

Assistant Attorney General