

Opinion No. 79-14

April 12, 1979

OPINION OF: Jeff Bingaman, Attorney General

BY: Deborah A. Moll, Assistant Attorney General

TO: Justice William R. Federici, The New Mexico Supreme Court, Supreme Court Building, Santa Fe, New Mexico 87503

PUBLIC RECORDS

The New Mexico Supreme Court and the Court of Appeals must, pursuant to the Inspection of Public Records Act, make their current and past opinions available to the public, and they may charge for the cost of retrieving these opinions.

QUESTIONS

(1) May the Supreme Court and the Court of Appeals make available copies of current hand-down opinions and past opinions to private individuals and commercial enterprises?

(2) May the Supreme Court and the Court of Appeals charge for the cost of reproducing their current and past opinions?

CONCLUSIONS

(1) Yes.

(2) Yes.

ANALYSIS

Pursuant to the Inspection of Public Records Act [Sections 14-2-1 to 14-2-3, NMSA 1978], the opinions of the Supreme Court and the Court of Appeals are subject to inspection by the public. Furthermore, the right to inspect public records includes the right to obtain copies of such records. **Ortiz v. Jaramillo**, 82 N.M. 445, 483 P.2d 500 (1971). Therefore, under the Inspection of Public Records Act, the Supreme Court and the Court of Appeals are required to make available their current and past opinions to the public for inspection or for copying.

However, even though their opinions are subject to public inspection and copying, the Supreme Court and the Court of Appeals could impose a charge to cover the cost of copying and retrieving these opinions. Although the administrative burden of making records available to the public is not, in and of itself, sufficient to deny inspection of

records, the custodian of records may place reasonable restrictions on the availability of records. **State ex rel. Newsome v. Alarid**, 90 N.M. 790, 568 P.2d 1236 (1977); **Ortiz v. Jaramillo, supra**. Specifically, the custodian may regulate the time and place of inspection. Similarly, a charge to cover the cost of copying and the cost, if any, of retrieving the records would appear to be within the terms of the Inspection of Public Records Act. However, such a charge would have to be reasonable and not so great as to deter public inquiry. Indeed, a charge to cover the cost of copying or retrieving the records would appear necessary to avoid any conflict with Article IX, Section 14 of the New Mexico Constitution.

Article IX, Section 14 of the New Mexico Constitution prohibits donations from the state in aid of private individuals or enterprises. The anti-donation clause has been interpreted as prohibiting any donation {³⁴} of something of value by the state to a private individual or enterprise for which no consideration is received in return. **Village of Deming v. Hosdreg Co.**, 62 N.M. 18, 303 P.2d 920 (1956). This clause has also been viewed as requiring the state to receive reimbursement for costs incurred for the benefit of private individuals or enterprises. See Opinion of the Attorney General, No. 64-92, dated July 16, 1964. Therefore, pursuant to Article IX, Section 14 of the New Mexico Constitution, the Supreme Court and the Court of Appeals should require reimbursement for the costs incurred by them for copying opinions for the public or for retrieving their opinions for inspection. However, such a charge need not be made in those cases in which the courts receive some other form of consideration in return for supplying their opinions to private individuals or enterprises.

In conclusion, therefore, the Supreme Court and the Court of Appeals must make their current and past opinions available to the public for inspection and copying. Furthermore, a charge to cover the cost of copying and the cost, if any, of retrieving the opinions may be imposed by the courts, unless some other type of consideration is received by the courts in return for providing the opinions.

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