



COUNTY OF ATASCOSA  
**LUCINDA A. VICKERS, COUNTY ATTORNEY**

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September 9, 2010

SEP 13 2010

**OPINION COMMITTEE**

FILE # ML-46582-10  
 I.D. # 46582

Hon. Greg Abbott  
 Attorney General of Texas  
 Opinions Section  
 P.O. Box 12548  
 Austin, TX 78711-2548

**RQ-0916-GA**

RE: Request for Opinion

To Attorney General Abbott:

In my position as County Attorney for Atascosa County, I am seeking an opinion from your office on the following questions:

1. Is the Atascosa County Clerk required to allow a member of the public to use a sheet feed scanner to copy the clerk's records?
2. Are the Atascosa County Clerk's rules regarding access to its records and copying of its records reasonable?

**STATEMENT OF FACTS**

On September 3, 2010, the Atascosa County Clerk received a letter dated September 1, 2010, from a member of the public demanding that he be allowed to use a sheet feed scanner to copy most of the Atascosa County Clerk's records. I have attached a copy of the letter to this request as Exhibit 1. As the letter states, this individual appears to be demanding that a clerk open the books for him so that he can accomplish the copying he wants to do. The letter does not state so specifically, but it also appears that this individual contemplates installing his sheet feed copier in or near the office in which the real property records are housed. This individual also attached a copy of Attorney General Opinion No. GA-0400 to his letter as an apparent justification for his request.

**ARGUMENT**

The Atascosa County Clerk fully acknowledges its duty to provide copies of its records to the public. The Atascosa County Clerk also acknowledges that it has a duty to provide reasonable rules to be imposed on those persons desiring to copy its records. This duty is discussed at length in Attorney General Opinion No. GA-0400, which is the same opinion that is attached to the letter received by the County Clerk. I have attached the County Clerk's current rules and request forms to this letter as Exhibit 2.

In Attorney General Opinion No. GA-0400, the summary provided states: "A county clerk who wishes to regulate the copying of real property plats should first promulgate reasonable rules that address such matters as available space, safety, and disruption. Whether any particular rule is valid is a question of fact to be determined by a court. Moreover, this result is limited to the office of the San Patricio County Clerk." Tex. Att'y Gen. Op. No. GA-0400 (2006) at 4. In the case at hand in Atascosa County, the County Clerk has already promulgated what she believes are reasonable rules for accessing and copying the records in her office. Under these rules, the only electronic device that appears to be authorized for copying outside of the clerk's own copy machines is a handheld scanner. The County Clerk's rules specifically forbid flash photography.

Attorney General Opinion No. GA-0400 also discusses at length the two pertinent cases that

have addressed a county clerk's rights and responsibilities, *Tarrant County v. Rattikin Title Co.*, 199 S.W.2d 269 (Tex. Civ. App. - Fort Worth 1947, no writ) and *The Permian Report v. Lacy*, 817 S.W.2d 175 (Tex. App. - El Paso 1991, writ denied). *Rattikin* stood for the proposition that there should be free and unhampered access to the county clerk's records subject to reasonable regulations to protect records and minimize interference. In *Permian*, the county clerk had promulgated certain rules to protect records and minimize interference while granting access to those records to the public; the appellate court upheld the reasonableness of some of the clerk's rules but stated that three of the rules were not reasonable. The court held that it was not reasonable to make the party requesting the copies reimburse the clerk for the supervision of the copying, that it was not reasonable to require the requesting party to put up an indemnity bond to insure the protection of the clerk's records, and that it was not reasonable to require the party making the copies to allow the clerk to copy at cost the microfilm processed by the applicant for availability to the public.

Of course, it goes without saying that what is reasonable to one party may not appear to be reasonable to another party. The Atascosa County Clerk has limited space available for those persons who wish to have access to the county records. The installation and use of a sheet feed scanner will take up a significant amount of the available space and will leave that much less space for the rest of the public to inspect or copy those records. Because of the duty that the County Clerk has to protect the records so that they will continue to be available to the public, a clerk will have to continuously supervise the copying process. That clerk will have to pull the records one by one, open each book so that each page can be removed and scanned, and then reinsert each page and close each book. This would cause an unreasonable disruption of the business operations of the Clerk's office because then that deputy clerk would not be able to complete his or her regular duties during the extended time period it would take to complete the copying process. In addition, as stated in Attorney General Opinion No. GA-0400, "(m)ost significantly, *Permian Report* strongly implies that the clerk should promulgate written rules that will be imposed *equally* (italics mine) on all those who wish to copy real property records, including plats." Tex. Att'y Gen. Op. No. GA-0400 (2006) at 3. Therefore, if the Atascosa County Clerk allows one individual to install and use a sheet feed scanner, then the clerk will be required to allow other individuals to install and use sheet feed scanners and other similar devices. If there is not space available to install one such scanner and there are not enough personnel to supervise one such process, then certainly there will not be enough space or personnel available for five, ten or fifty such scanners. And certainly the installation of numerous devices could conceivably overload the electrical outlets that currently exist in the available space.

#### CONCLUSION

Based on the statement of facts and the arguments outlined above, I submit that the Atascosa County Clerk has promulgated reasonable rules to both protect the county records and to make them available to the public for inspection and copying. I further submit that these rules prohibit the use by a member of the public of a sheet feed scanner. I respectfully request that you issue an opinion regarding the questions listed above.

Sincerely,

  
LUCINDA A. VICKERS  
Atascosa County Attorney

cp/LAV

COPY



September 1, 2010

THE HONORABLE DIANE GONZALES  
ATASCOSA COUNTY CLERK  
1 COURTHOUSE CIRCLE DR #102  
JOURDANTON, TEXAS 78026-3446

Your Honor:

This is an Open Records Request. According to the county clerk's obligations under the Texas Public Information Act, I am requesting to copy the following records:

- Official Public Records
- Oil & Gas Lease Records
- Maps Records
- Deed Records
- Deed of Trust Records

Enclosed is a copy of a legal opinion, GA-0400, by Greg Abbott, Texas Attorney General. I will use a Fujitsu 6670 sheet feed scanner. Books will need to be opened. If you refuse to allow access to your books for copying public records in your office, a complaint will be filed with the Attorney General's Office.

Please respond within ten days by postal mail.

Sincerely yours,

Keith Houseman  
1-800-522-0139

kah

Enc: Texas Attorney General Opinion GA-0400

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DIANE GONZALES  
ATASCOSA COUNTY CLERK

BY Camacho DEPUTY

EX 1



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 14, 2006

The Honorable David Aken  
San Patricio County Attorney  
San Patricio County Courthouse, Room 102  
Sinton, Texas 78387

Opinion No. GA-0400

Re: Whether an individual or company may set up a plat copying machine in a county clerk's office or in another area of the county courthouse (RQ-0379-GA)

Dear Mr. Aken:

You ask whether an individual or company may set up a plat copying machine in a county clerk's office or in another area of the county courthouse.<sup>1</sup>

You provide us with the following facts:

*The San Patricio County Clerk's office does not have a copy machine capable of copying property plats in the office. This office is comprised of space on the first floor and basement of the San Patricio County Courthouse. There is not enough space on either floor of the office to set up a plat copying machine.*

*The Clerk's office has had, and continues to have, an arrangement with the County Surveyor's ("King and Petrus") office whereby a Deputy County Clerk transports requested plats to the County Surveyor's office. The plats are left in the temporary custody of the County Surveyor's office only because of that office's standing as County Surveyor. Otherwise, plat maps (and other public documents) are never allowed outside of the clerk's office – even within the courthouse – without the continued presence of a Deputy Clerk.*

*While space may be available in the basement of the courthouse outside of the County Clerk's office, with the consent of*

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<sup>1</sup>See Letter from Honorable David Aken, San Patricio County Attorney, to Honorable Greg Abbott, Attorney General of Texas (Aug. 16, 2005) (on file with Opinion Committee, also available at <http://www.oag.state.tx.us>) [hereinafter Request Letter].

*the County Judge, a Deputy County Clerk would be required to be continually present with the plats when they are removed from the Clerk's office. This would cause an unreasonable disruption of the business operations of the Clerk's office in that the Deputy Clerk would not be able to complete her regular duties during the several days (the title company anticipates three days) that would be necessary for the plat copying to be completed.*

Request Letter, *supra* note 1, at 1-2 (emphasis added).

Subchapter B of chapter 118 of the Local Government Code provides for fees of the county clerk other than court fees. See TEX. LOC. GOV'T CODE ANN. §§ 118.011-.025 (Vernon 1999 & Supp. 2005) (subchapter B). Section 118.024 provides:

(a) This subchapter does not limit or deny any person full and free access to any document referred to in this subchapter. A person is entitled to read, examine, and copy from those documents or from any microfilm or other photographic image of the documents.

(b) A person may exercise the right provided by this section without paying any charge under the reasonable rules of the county clerk at all reasonable times during the hours in which the clerk's office is open to the public.

*Id.* § 118.024 (Vernon 1999). You believe that the county clerk is not required under section 118.024 to permit an individual or company to bring its own plat copying machine into the clerk's office, and you base this view upon Attorney General Opinion JM-757 (1987). See Request Letter, *supra* note 1, at 1-2. That opinion states that although the predecessor statute to section 118.024 "indicates that members of the public may make copies themselves, it does not guarantee a specific method of copying or an unlimited right to copy." See Tex. Att'y Gen. Op. No. JM-757 (1987) at 2. If Opinion JM-757 were the only authority in this matter, your position would be compelling. Two judicial decisions, however, one prior to Opinion JM-757 and the other subsequent to it, shed additional light on the issue.

In a 1947 case, the court took "judicial notice that all reputable abstractors should have free and unhampered access to the use of the public records located in the County Clerk's office, subject, of course to reasonable rules and regulations set out by the County Clerk to protect the records and to minimize the interference in the Clerk's office . . ." *Tarrant County v. Rattikin Title Co.*, 199 S.W.2d 269, 273 (Tex. Civ. App.—Fort Worth 1947, no writ). Although *Rattikin Title* long preceded the days of plat copying machines, and indeed centered on the combined use of "many typewriters," *id.* at 270, the principle stated there — free and unhampered access subject to reasonable regulations to protect records and minimize interference — is indeed relevant to the present inquiry.

In *The Permian Report v. Lacy*, a company that wished to microfilm public land records brought an action against the county clerk of Gaines County. The court preliminarily noted that

“[t]his appears to be a case of first impression as to what are reasonable rules for a county clerk to impose upon a party who desires to copy deed and lien records and other instruments that might affect land titles within a particular county.” *The Permian Report v. Lacy*, 817 S.W.2d 175, 176 (Tex. App.—El Paso 1991, writ denied). The clerk in that case did not contend that space was unavailable, nor was there any indication that a plat copying machine was involved. Rather, the clerk had promulgated ten rules “applicable to parties who desire to copy or reproduce records of the County Clerk of Gaines County, Texas.” *Id.* at 178. The trial court upheld all of the clerk’s rules. *See id.* at 175. The appellate court affirmed the “part of the trial court’s order which found [that] the County Clerk of Gaines County . . . established prudent and reasonable rules for the copying of county records, except as to” the third, fifth, and seventh rules. *Id.* at 178. The third rule required the party making copies to reimburse the clerk for supervision of copying, *id.* at 178; the fifth required the party making copies to submit an indemnity bond to “insure the protection of the records, indemnification for potential claims and payment of costs for the copying of records,” *id.*; and the seventh required the party making copies to allow the clerk “to copy at cost the microfilm processed by the applicant for availability to the public.” *Id.* The rules upheld by the court included rule one, which permitted the clerk to require from the person making copies an application to copy particular records, *see id.*; rule two, which allowed the clerk to “impose such reasonable and necessary requirements upon the applicant to insure the safety of the records and maintain the efficiency of the office,” *id.*; rule six, which permitted the clerk to “determine, based upon the assessment of the information contained in the application, a reasonable space necessary to conduct the copying of the records” and to restrict that space to the area specified by the clerk, *id.*; and rule ten, which allowed the clerk to “impose such reasonable and necessary rules to be applied based upon the particular equipment or technique described in the application.” *Id.*

In our opinion, neither *Rattigan Title* nor *Permian Report* fully addresses your request, but together they provide some guidelines regarding the clerk’s rights and responsibilities. Most significantly, *Permian Report* strongly implies that the clerk should promulgate written rules that will be imposed equally on all those who wish to copy real property records, including plats. Those rules should include a determination as to the availability of space, the maximum size of copying equipment that may be brought in based on the space available, the safety of any proposed copying methods (in consultation with the fire marshal), and what constitutes a potential disruption to the operation of the clerk’s office. The clerk may not impose any charge for supervision of copying. Nor do we believe that the alternative you propose regarding purchasing copies from the county surveyor is necessarily permissible, especially in light of the fact that the county surveyor’s office is housed in a private firm. If the clerk’s rules ultimately prohibit the title company from using its own plat-copying equipment, the clerk would be well advised to make copies available at cost. Finally, if the clerk chooses to permit the use of portable copying equipment, “it must deal evenhandedly with various members of the public who wish to use portable copying equipment.” Tex. Att’y Gen. Op. No. JM-757 (1987) at 5.

In any event, the inquiry here is fact-intensive, and in the event of a conflict that cannot be resolved by the parties, the reasonableness of the clerk’s rules must ultimately be addressed by a court. We cannot say as a matter of law what proposed rules would be deemed adequate. *See* Tex. Att’y Gen. Op. No. GA-0139 (2004) at 3 (opinion process does not determine questions of fact). We note that the scope of this opinion is limited to the office of the San Patricio County Clerk.

S U M M A R Y

A county clerk who wishes to regulate the copying of real property plats should first promulgate reasonable rules that address such matters as available space, safety, and disruption. Whether any particular rule is valid is a question of fact to be determined by a court. Moreover, this result is limited to the office of the San Patricio County Clerk.

Very truly yours,

  
GREG ABBOTT  
Attorney General of Texas

BARRY R. MCBEE  
First Assistant Attorney General

ELLEN L. WITT  
Deputy Attorney General for Legal Counsel

NANCY S. FULLER  
Chair, Opinion Committee

Rick Gilpin  
Assistant Attorney General, Opinion Committee

\*\*\*\*ATTENTION ALL CUSTOMERS\*\*\*\*

1. OFFICE HOURS ARE 8:00 AM TO 4:30 PM.
2. PLEASE PAY FOR COPIES BEFORE 4:30 PM.
3. NO COPIES ARE TO LEAVE THE OFFICE UNPAID.
4. ALL INDIVIDUALS USING ESCROW ACCOUNTS MUST BE LISTED ON ACCOUNT.
5. THERE IS A 30 MINUTE TIME LIMIT ON PUBLIC STATIONS IF CUSTOMER IS REQUESTING TO USE THE SAME STATION.
6. THERE WILL BE NO LOUD TALKING, OTHER DISTRACTIONS AND NON-BUSINESS ACTIVITIES WHILE IN OUR OFFICE.
7. AS A COMMON COURTESY, LIMIT USE OF RECORDS, EQUIPMENT OR SPACE.
8. NO TOBACCO PRODUCUTS OR ALCOHOLIC BEVERAGES ALLOWED.
9. CELL PHONES MUST BE SET TO VIBRATE.
10. HAND HELD SCANNERS MAY BE USED, BUT NO FLASH PHOTOGRAPHY.
11. ALL COPIES FROM BOOKS AND PROBATES MUST BE MADE BY CLERK.
12. CUSTOMERS ARE NOT ALLOWED TO TAKE BOOKS AND /OR FILES APART FOR ANY REASON.
13. BOOKS AND FILES ARE NOT TO LEAVE OFFICE FOR ANY REASON.
14. CHILDREN 12 AND UNDER ARE NOT ALLOWED TO USE COMPUTERS OR HANDLE BOOKS.

