

Office of Open Records Counsel Declares Fees for Production of Public Records in the City of Hendersonville Must be Established by Ordinance

In late September the Office of Open Records Counsel (OORC) released an [opinion](#) addressing the adoption of a public records policy in the City of Hendersonville. A [more recent version](#), updated for clarification, was released on October 14. In the opinion the OORC stated that the city's policy must be adopted by ordinance and that a resolution was inadequate.

To charge a citizen for copies of public records, a city must properly adopt a policy.⁽¹⁾ Hendersonville, like most cities across the state, adopted the OORC's Schedule of Reasonable Charges by resolution. At the time, there was no suggestion that such a policy be adopted by anything other than a resolution. In fact, the MTAS model policy has been in the form of a resolution since its inception.

The stated question in the opinion was whether language in the Mayor-Aldermanic general law charter requiring an ordinance to establish fees for "copying and certification" is applicable to the adoption of fees for copying public records.⁽²⁾ The authors of the charter language have indicated that its intent was limited to adopting fees for certified copies. However, when a court is interpreting statutory language and determines that statutory language is clear and unambiguous, the court simply applies its plain meaning. The OORC opinion concludes that the plain language of the provision is clear.

The opinion could have ended with only a finding that the Hendersonville charter requires an ordinance. However, the opinion does not stop there. Rather, the OORC also discusses ordinance adoption versus resolution adoption generally based on a 1982 Tennessee Attorney General Opinion that states the use of a resolution is appropriate only for acts that are "ministerial" and "temporary."⁽³⁾ Relying on this standard, the OORC suggests that in Hendersonville, the act of adopting fees, "was not intended to be ministerial in nature nor was it meant to be temporary...." The OORC opinion's concluding footnote attempts to limit its applicability to, "the question presented that is specific to the City's charter...." Regardless, the act of fee adoption is universal among cities, as is the question of whether a resolution or ordinance is necessary.

While an opinion of the OORC is not legally binding, it does carry persuasive authority. Furthermore, compliance with OORC policies and guidelines affords a city some safe-harbor protections in the event of a legal challenge.⁽⁴⁾ A general law city manager-commission or mayor-aldermanic charter city wishing to comply with the holdings of the OORC opinion must adopt any charges related to the production of public records by ordinance. Other cities are encouraged, by the OORC, "to review the process by which fees for copies was established to ensure compliance with all applicable charter provisions." [A sample ordinance is attached here.](#) Should you have any questions, please contact your MTAS management consultant.

(1) T. C. A. § 10-7-503

(2) The Mayor-Aldermanic general law charter, at T. C. A. § 6-4-204(b), reads "(b) Fees for copying and certification shall be charged as established by ordinance." The City Manager-Commission general law charter, at T. C. A. § 6-21-405 and some private act charters contain similar language.

(3) Tenn. Att'y. Gen. Op. 82-286 (June 3, 1982).

(4) T.C.A. § 8-4-604.