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**PUBLIC RECORDS AND INFORMATION:
Right to Copy Computer Tape of
Voter Registration Records**

Honorable Dallas C. Ingemunson
State's Attorney
Kendall County
Kendall County Courthouse
Yorkville, Illinois 60560

Dear Mr. Ingemunson:

I have your letter wherein you ask whether the county clerk may furnish an organization with a copy of the computer tape of the updated voter registration records of Kendall County. You have advised me that the computer tape contains the same information that is on the county voter registration record cards. It is my opinion that when the information on county voter registration record cards is kept on a computer tape, interested individuals and organizations have a general right to copy the tape. Thus, the Kendall County clerk may furnish copies of the computer tape

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containing the county's voter registration records to the organization.

Prior to the enactment of Public Act 78-934, there was a prohibition against copying the information on voter registration cards except in those cases where the information was needed for determining whether a person had a right to vote, sign a primary petition or hold an office. (Ill. Rev. Stat. 1971, ch. 46, par. 4-11.) Public Act 78-934 repealed that prohibition and added the following provision to section 4-8 of The Election Code (Ill. Rev. Stat. 1975, ch. 46, par. 4-8):

"

* * *

The registration cards shall be deemed public records and shall be open to inspection during regular business hours, except during the 28 days immediately preceding any election. Registration record cards may also be inspected, upon approval of the officer in charge of the cards, during the 28 days immediately preceding any election. Registration record cards shall also be open to inspection by certified judges and poll watchers and challengers at the polling place on election day, but only to the extent necessary to determine the question of the right of a person to vote or to serve as a judge of election. At no time shall poll watchers or challengers be allowed to physically handle the registration record cards.

* * *

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There can be no doubt that the public has a right to inspect the information on voter registration cards. The right to inspect public records carries with it the right to make copies of the records. (People ex rel. Gibson v. Peller (1962), 34 Ill. App. 2d 372; Annot., 84 A.L.R. 2d 1261 (1962); 76 C.J.S. Records §35 (1952).) Therefore, according to the above quoted provision in section 4-8 of The Election Code, an individual or organization has a right to copy the information on voter registration cards.

The court in Peller, supra, held that the right to copy records included the right to photograph them. The court stated in part at pages 374 and 375 as follows:

" * * *

The right of relators to reproduce the public records is not solely dependent upon statutory authority. There exists at common law the right to reproduce, copy and photograph public records as an incident to the common law right to inspect and use public records. Good public policy requires liberality in the right to examine public records.
* * *

Defendants say that relators have the right to look, examine and inspect with the naked eye the public records and copy by hand these public records, but that they have no right to photograph the records. This argument cannot be sustained by logic or common knowledge. Modern

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photography is accurate, harmless, noiseless and time saving. It does nothing more than capture that which is seen with the naked eye. Neither defendants nor the public can be harmed by the reproduction of the records exactly as they exist. The fact that more modern methods of copying are devised should not lessen the basic right given under the common law. * * *

Limited to its facts, the Peller case only relates to the photocopying of public records. However, the quotation above suggests the idea that other new ways of copying records may be used by the public as long as the records are not harmed.

In Menge v. City of Manchester (1973), 113 N.H. 533, 311 A. 2d 116, the Supreme Court of New Hampshire decided that it did not make sense to require the public to copy public information in a tedious manner when the information could be obtained easily and safely from computerized tapes. The court stated at page 538:

" * * *

The ease and minimal cost of the tape reproduction as compared to the expense and labor involved in abstracting the information from the field cards are a common sense argument in favor of the former. * * *

The New Mexico Supreme Court in Ortiz v. Jaramillo (1971), 82 N.M. 445, 483 P. 2d 500, ruled that the copying of magnetic

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tapes would not unreasonably endanger the voter registration records on the tapes. The court stated at page 446:

" * * *

We are unable to understand why the right to inspect public records should not carry with it the benefits arising from improved methods and techniques of recording and utilizing the information contained in these records, so long as proper safeguards are exercised as to their use, inspection, and safety.

The evidence is clear that copies of the tape can be made with reasonable safety. * * * "

In both the Menge and Ortiz cases it was conceded that the information was a public record that the public had a right to copy. The only question in these two cases was whether the public had a right to copy the information when it was on a computer tape. In both of these cases the courts held that it made no sense to force the public to use tedious and expensive methods of copying public information when the same information could be copied easily and inexpensively from computer tapes. I agree with the reasoning in these cases.

Section 4-8 of The Election Code gives the public the right to inspect and copy the information on voter registration cards. When the county clerk keeps the voter

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registration records on computer tapes, it makes no sense and accomplishes no legitimate purpose to force individuals and organizations to copy the information from the registration cards rather than from the tape. Section 4-8 evidences a policy of opening the county voter registration records to public inspection. Allowing interested individuals and organizations to copy computer tapes of registration records executes this policy. Therefore, as a general rule, interested individuals and organizations may copy computer tapes containing voter registration records.

This general rule is subject to some qualifications. Section 4-8 provides that during the 28 day period preceding any election, registration cards may be inspected only upon approval of the county clerk. The county clerk should have the same authority to approve requests for copies of computer tapes during that 28 day period.

The county clerk also has the authority to impose reasonable regulations on the copying of computer tapes. As the custodian of the voter registration records, the county clerk is responsible for insuring their safety in addition to providing all interested individuals and organi-

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zations with an equal opportunity to copy the records. (See, Whorton v. Gaspard (1965), 239 Ark. 715, 393 S.W. 2d 773; Direct Mail Service v. Registrar of Motor Vehicles (1937), 296 Mass. 353, 5 N.E. 2d 545; 66 Am. Jur. 2d Records and Recording Laws § 14 (1973).) It is my understanding that the type of computer tape used in most counties can be copied without any damage to the tape. However, each county clerk must examine the type of tape used in his office and determine whether copying the tape would harm it. In order to protect the tape, the county clerk may require that the copying be done by him or under his supervision.

It is assumed that when voter registration records are put on computer tapes county clerks can process the records more efficiently. The copying of the computer tapes should not be allowed to interfere with this efficiency. Hence, each county clerk may set limits on the copying of the tapes if the copying interferes with the functioning of his office. See, Chicago Title & Trust Co. v. Danforth (1908), 236 Ill. 554.

Furthermore, when the county clerk furnishes an individual or organization with a copy of a computer tape containing voter registration records, he has the authority

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to require the individual or organization to pay a fee. Section 13 of the Local Records Act (Ill. Rev. Stat. 1975, ch. 116, par. 43.113) provides that when public records are reproduced by "photography, microphotography or other reproductions on film", the county clerk may charge a fee for copies of the photographs, microphotographs or film reproductions. The fee specified in section 13 is "the actual cost of such copies, plus a service charge of 15% of such cost". It is in accord with the basic philosophy of the Local Records Act that the same fee should be charged for copies of computer tapes.

Very truly yours,

A T T O R N E Y G E N E R A L