



OFFICE OF THE ATTORNEY GENERAL
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PUBLIC RECORDS AND INFORMATION:
Access to County Recorder's
Records Via the Internet

The Honorable Marshall E. Douglas
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Rock Island County Courthouse
Rock Island, Illinois 61201

The Honorable Diane Sipich
State's Attorney, Douglas County
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Dear Mr. Douglas and Ms. Sipich:

I have your letters wherein you pose several questions regarding accessing information contained in the records of the county recorder via the Internet. Specifically, you have both inquired: (1) whether the county recorder may establish and maintain a Web site that provides for Internet access to information contained in the records of the county recorder; and (2) whether the county recorder may assess a fee upon those businesses or individuals who desire to obtain access to the records of the county recorder through the Internet. Additionally, Mr. Douglas has inquired: (3) whether moneys held in the county

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recorder's automation fund may be used to subsidize the creation and maintenance of a county recorder's Web site; and Ms. Sipich has inquired: (4) whether a county recorder who has decided to establish and maintain a Web site and to post public records thereon is required to post such public records in their entirety. For the reasons hereinafter stated, it is my opinion that: (1) the county recorder, in the exercise of his or her authority to control the internal operations of the recorder's office, may establish and maintain a Web site that provides Internet access to information contained in the records of the county recorder; (2) under current statutory provisions, the county recorder has no authority to assess a fee upon persons or businesses as a condition of providing Internet access to public records; (3) the county recorder's automation fund may not be used to subsidize the costs associated with creating and maintaining such a Web site; and (4) a county recorder is not required to post public records in their entirety on the Web site.

Mr. Douglas' letter states that the Rock Island County Recorder is contemplating entering into a contract with a local company to provide Internet access to specified information in the records of the recorder. Under the terms of that contract, the Internet provider would create a Web site for the county

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recorder's office, which would provide access to information from
"* * * currently maintained data stored in the [recorder's]
computer system * * * [including] Grantor/Grantee Indexes * * *
property information, and other data entry information in the
current system that the recorder is required to keep pursuant to
her statutory duties which is open to inspection". The Internet
provider would also establish a "dedicated" connection to the Web
site, that is, an arrangement whereby a person desiring to access
the recorder's Web site must enter a pre-assigned password and
code into the system before access is granted. In addition to
the foregoing services, the Rock Island County Recorder's pro-
posal also contemplates the purchase of any computer equipment
necessary for the project, the installation of any necessary
hardware or software on the office's computer system and the
provision of any personal services necessary to maintain and
update the equipment and the Web site. Mr. Douglas has further
stated that the Rock Island County Recorder's Web site project
would be financed by using moneys in the county recorder's
automation fund and by charging a fee to the users of the Web
site. Although the details regarding the Douglas County proposal
are less complete, it appears that the salient points of the
proposal are generally similar to those of Rock Island County's.

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The first question, therefore, is whether a county recorder may establish and maintain a Web site that provides Internet access to information contained in the records of his or her office.

It is well established that public officers possess only those powers which are expressly granted to them by the constitution or by statute, together with those powers which are necessarily implied therefrom to effectuate the powers which have been expressly granted. (Diederich v. Rose (1907), 228 Ill. 610, 615; McKenzie v. Arthur T. McIntosh & Co. (1964), 50 Ill. App. 2d 370, 377; see also Lake County Board of Review v. Property Tax Appeal Board (1987), 152 Ill. App. 3d 1093, 1100, aff'd, 119 Ill. 2d 419 (1988).) A review of the provisions of the Counties Code (55 ILCS 5/1-1001 et seq. (West 1998)), the Electronic Commerce Security Act (5 ILCS 175/1-101 et seq. (West 1998)) and other pertinent statutory provisions has not disclosed any express grant of authority to county recorders to establish a Web site or to make county records available via the Internet. Under division 3-5 of the Counties Code (55 ILCS 5/3-5001 et seq. (West 1998)), however, it is the county recorder's duty to record
"* * * bills of sale of personal property, chattel mortgages and releases, extensions and assignments, thereof * * * certificates of discharge of discharged members of the military, aviation and

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naval forces of the United States * * *" (55 ILCS 5/3-5012 (West 1998)), deeds, assignments of mortgages, leases or liens and maps or plats of additions or subdivisions (55 ILCS 5/3-5018 (West 1998), as amended by Public Act 91-791, effective June 9, 2000). Although initially required to maintain books in which to note the recordation of the foregoing instruments, the General Assembly has subsequently authorized the recorder to "* * * install or contract for the use of a computerized system that will permit automated entry and indexing, alphabetically by document, of instruments filed in his or her office and that will provide both quick search and retrieval of such entries * * *". (55 ILCS 5/3-5025 (West 1998).) Moreover, section 3-5036 of the Counties Code (55 ILCS 5/3-5036 (West 1998)) requires that "[a]ll records, indices, abstract and other books kept in the office of any recorder, and all instruments filed therein * * * [or] deposited or left for recordation therein shall * * * be open for public inspection and examination". In carrying out these duties, section 3-5005.2 of the Counties Code (55 ILCS 5/3-5005.2 (West 1998)) grants the county recorder the right to control the internal operations of his or her office, including the authority "* * * to procure necessary equipment, materials and services to perform the duties of his office. * * *"

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Based upon the pertinent statutes, it is clear that a county recorder is obligated to maintain grantor and grantee indices, certain real property information and a number of the other types of records that would be included in the county recorders' proposed Web sites. This information is generally open to public inspection and examination. Because county recorders are under an existing duty to maintain and make available to the public the information that they have proposed loading onto their Web sites, it is my opinion that the decision to maintain those public records in an additional format that allows for Internet access to the information contained therein is a matter within the county recorder's internal control of the operations of his or her office. Therefore, it is my opinion that a county recorder may establish and maintain a Web site that provides Internet access to information contained in the records of the office of the county recorder.

Your second question concerns whether the county recorder may assess a fee upon businesses or individuals who avail themselves of the opportunity to obtain access to the records of the county recorder via the Internet. It has long been recognized that public officers may collect fees only as authorized by law. (Crocker v. Finley (1984), 99 Ill. 2d 444,

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452; Dille v. Rice (1905), 120 Ill. App. 353, 358.) Although, under the provisions of division 3-5 of the Counties Code, a county recorder is authorized to charge for, or receive a fee related to, the filing of various instruments (55 ILCS 5/3-5018 (West 1998), as amended by Public Act 91-791, effective June 9, 2000) and the certifying of specified records (55 ILCS 5/3-5039 (West 1998)), nothing in the provisions of the Code, the Electronic Commerce Security Act, the Freedom of Information Act or any other pertinent statutory provisions either expressly or impliedly authorizes a county recorder to collect a fee for the examination of the county recorder's records, either electronically or otherwise. Consequently, it is my opinion that in the absence of a grant of statutory authority therefor, a county recorder may not assess a fee against persons for accessing the records of the county recorder via the Internet.

Mr. Douglas has noted that the Rock Island County Recorder has proposed the use of moneys in the county recorder's automation fund to create and operate the proposed Web site. Section 3-5018 of the Counties Code authorizes a county recorder to assess a fee to subsidize the cost of automation of the county recorder's document storage system and the cost of a countywide Geographic Information System:

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" * * *

The county board of any county may provide for an additional charge of \$3 for filing every instrument, paper, or notice for record, in order to defray the cost of converting the county recorder's document storage system to computers or micrographics.

A special fund shall be set up by the treasurer of the county and such funds collected pursuant to Public Act 83-1321 shall be used solely for a document storage system to provide the equipment, materials and necessary expenses incurred to help defray the costs of implementing and maintaining such a document records system.

The county board of any county that provides and maintains a countywide map through a Geographic Information System (GIS) may provide for an additional charge of \$3 for filing every instrument, paper, or notice for record in order to defray the cost of implementing or maintaining the county's Geographic Information System. Of that amount, \$2 must be deposited into a special fund set up by the treasurer of the county, and any moneys collected pursuant to this amendatory Act of the 91st General Assembly and deposited into that fund must be used solely for the equipment, materials, and necessary expenses incurred in implementing and maintaining a Geographic Information System. The remaining \$1 must be deposited into the recorder's special funds created under Section 3-5005.4. The recorder may, in his or her discretion, use moneys in the funds created under Section 3-5005.4 to defray the cost of implementing or maintaining the county's Geographic Information System.

The foregoing fees allowed by this Section are the maximum fees that may be col-

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lected from any officer, agency, department or other instrumentality of the State. The county board may, however, by ordinance, increase the fees allowed by this Section and collect such increased fees from all persons and entities other than officers, agencies, departments and other instrumentalities of the State if the increase is justified by an acceptable cost study showing that the fees allowed by this Section are not sufficient to cover the cost of providing the service.

A statement of the costs of providing each service, program and activity shall be prepared by the county board. All supporting documents shall be public record and subject to public examination and audit. All direct and indirect costs, as defined in the United States Office of Management and Budget Circular A-87, may be included in the determination of the costs of each service, program and activity." (Emphasis added.)

Under section 3-5018 of the Code, a county board may impose an additional charge of \$3 for each document filed with the county recorder to defray the cost of converting the county recorder's document storage system to computers. The county board may increase the amount of the charge beyond \$3 if the increase is justified by an acceptable cost study. The moneys collected are to be deposited into a special fund, the proceeds of which are to be used solely to cover the costs and necessary expenses incurred by the recorder in implementing and maintaining an automated "document storage system". The expenditure of moneys in the county recorder's automation fund to create and

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maintain a Web site was obviously beyond the contemplation of the General Assembly when the authority to collect the automation fee was granted to county recorders in 1984. (See Public Act 83-1321, effective December 3, 1984.) Moreover, the term "Web site" generally refers to "[a] location on the World Wide Web, consisting of one or more Web pages [that is, 'a single file on the World Wide Web, providing text, graphical images, etc. * * *'] accessible at a single address * * *". (Webster's New World College Dictionary 1622 (4th ed. 1999).) Thus, it appears that a "Web site" is merely a medium by which access to certain data loaded onto a Web page may be secured; although a Web page may contain a document or a series of documents, it is not primarily a document storage system, within the meaning of section 3-5018 of the Counties Code. Therefore, it is my opinion that under the current statutory provisions, moneys in the county recorder's automation fund may not be used to maintain and operate a Web site.

Lastly, Ms. Sipich has inquired whether a county recorder who has determined to develop and maintain a Web site and to post public records thereon is required to post those public records in their entirety. The apparent concern is that some public records may contain sensitive information that could

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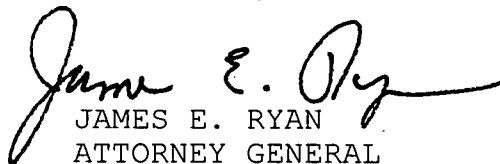
be used for inappropriate purposes, and that granting ready access to this information via the Internet would not serve the public's interest. For example, State and Federal liens generally include the social security numbers of persons against whom liens have been filed and would be a part of certain public records in the county recorder's office.

As previously discussed, a county recorder is under no statutory duty to maintain a Web site or to post public records thereon. Rather, the decision to maintain public records in an additional format that allows for Internet access is an exercise of the county recorder's official discretion. Moreover, although the Freedom of Information Act (5 ILCS 140/1 et seq. (West 1998)) generally requires that public bodies make available for inspection or copying all public records (5 ILCS 140/3(a) (West 1998)), the Act does not mandate that the county recorder, or any other public officer, post the whole of a public record on the office's Web site. Therefore, it is my opinion that the determination of which public records or portions thereof to post on a Web site is a matter within the discretion of the county recorder. To the extent that a person wishes to view a complete public record which has been posted in part, section 3-5036 of the Counties Code guarantees that "[a]ll records, indices, abstract and other

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books kept in the office of any recorder, and all instruments
filed therein * * * [or] deposited or left for recordation
therein shall * * * be open for public inspection and examina-
tion" at the office of the recorder.

Sincerely,


JAMES E. RYAN
ATTORNEY GENERAL