

HIGHWAY PATROL: Patrol has no authority to make charge for supplying
MOTOR VEHICLES: copies of accident reports to interested parties.

June 13, 1949



Mr. David E. Harrison, Superintendent
Missouri State Highway Patrol
Jefferson City, Missouri

Dear Sir:

We are in receipt of your recent request for an official opinion, which request reads as follows:

"This department contemplates making copies of accident reports for attorneys and other interested persons, but the materials and labor will involve some expense to the patrol. Therefore, we ask that you inform us whether or not it would be illegal for this department to make a charge not to exceed \$1.00 for copies of the reports.

"We realize the money collected would of necessity be turned in to the state treasurer, but we would like to inquire if it would be possible to ask that this be deposited to the State Highway Department Fund rather than in the General Revenue Fund."

There is no statutory authorization or requirement that the accident reports in question be made and filed. However, Section 8354, Laws Missouri 1943, p. 654, provides that the superintendent of the highway patrol shall "make all administrative rules and regulations * * * for the members of the patrol." Under this authority, Section 1 of the Rules and Regulations relating to Accident Reports was issued and promulgated. Section 1 provides that "every traffic accident involving a fatality, personal injury, or serious property damage, is to be investigated and Form SHP 2R prepared." This completed form, commonly known as the accident report, is kept on file by the patrol. It must first be determined whether or not these accident reports are matters of public record.

In the case of State ex rel. Kavanaugh v. Henderson, 169 S.W.(2d) 389, 350 Mo. 968, there was the question of whether copy invoices of liquor sales filed by liquor dealers with the supervisor of liquor

control pursuant to a regulation issued by the supervisor constituted public records. The court defined a public record at l.c. 392:

"In all instances where, by law or regulation, a document is required to be filed in a public office, it is a public record and the public has a right to inspect it. 53 Corpus Juris, Section 1, Pages 604 and 605; Clement v. Graham, 78 Vt. 290, 63 A. 146. Ann. Cas. 1913E, 1208; Robinson v. Fishback, 175 Ind. 132, 93 N.E. 666, L.R.A. 1917B, 1179, Ann. Cas. 1913B, 1271; State ex rel. Eggers v. Brown, 345 Mo. 430, 134 S.W.(2d) 28.

"Section 4889, supra, also gives authority to the supervisor 'to make such other rules and regulations as are necessary and feasible for carrying out the provisions of this act, as are not inconsistent with this act.' Under this authority, the appellant's predecessor did promulgate Regulation No. 16, which did require liquor dealers to send the supervisor a copy invoice of liquor sales. As long as that Regulation was in effect, of course, they were public records and respondent was entitled to inspect them.
* * *

Accident reports of the same nature as those on file with the patrol were held in the case of People v. Harnett, 131 Misc. 75, 226 N.Y.S. 388 to be public records subject to inspection by persons showing therein an interest. These reports were filed with the Commissioner of Motor Vehicles pursuant to a statute requiring persons involved in automobile accidents to report the matter to the Commissioner upon forms provided therefor. It was contended that these accident reports were confidential in nature and therefore not subject to inspection. The court, however, held that inspection of the accident reports by persons having a proper interest therein would not be contrary to public policy, but would promote the public interest, providing stricter regulation in a dangerous field and also aiding in the determination of the truth, rather than suppressing it.

In view of the foregoing, we are of the opinion that the accident reports kept on file by the highway patrol are public records. It is fundamental law that persons interested therein have the right to inspect public records, which right also includes the right to make copies and memoranda therefrom. No fee may be charged for the exercise of this right of inspection, unless expressly provided for by statute. Therefore, the patrol must make the accident reports, as public records, available to parties interest therein, and no fee

may be charged for the exercise of this right of inspection.

The patrol is a state agency whose actions are proper only when done under authority expressly or impliedly conferred by statute, therefore, the patrol can act only in an official capacity. The charge not to exceed \$1.00 for copies of accident reports which the patrol contemplates supplying to interested parties would be a charge for the rendition of services by the patrol in its official capacity. As such, it would constitute a fee, as a fee is a charge made for the performance of official acts by a public office or officer.

It is well established that a fee may be charged for the rendition of services by a public official only when expressly provided for by statute. In the absence of a statutory provision therefor, the rendition of services is deemed to be gratuitous; see *Nodaway County v. Kidder*, 129 S.W.(2d) 857, 344 Mo. 795. Since there is no statutory provision which allows the patrol a fee for supplying a copy of an accident report, the contemplated charge would not be within the province of the patrol's authority.

It should be noted that the patrol has no duty to supply copies of these accident reports to interested parties, as there is no statutory provision therefor.

CONCLUSION

Therefore, it is the opinion of this department that the accident reports kept on file by the highway patrol are public records, and as such, subject to inspection. However, the patrol has no authority to make a charge for supplying a copy of these accident reports to parties interested therein.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

RHV:mw