

OFFICIAL OPINION NO. 77-40, Authority of municipal police department to charge for copies of accident reports

May 5, 1977

Mr. Robert R. Slocum
Walworth County State's Attorney
Post Office Box 575
Mobridge, South Dakota 57601

Official Opinion No. 77-40

Authority of municipal police department to charge for copies of accident reports

Dear Mr. Slocum:

You have requested an official opinion from this office based on the following factual situation:

FACTS:

The police department of city X in this county has customarily charged a fee of two dollars for copies of accident reports requested by parties involved in accidents and by insurance adjusters. Recently insurance adjusters have been complaining that the charge is not authorized by law, and stating that there should be no charge for the copies furnished.

Based on the above facts you have asked the following questions:

QUESTIONS:

1. Does a city police department have legal authority to make a charge or fee for furnishing copies of accident reports to any person requesting such copies, under SDCL 32-34-13 or similar statute?
2. Would a municipality have authority, assuming the answer to the first question is no, to provide by ordinance for the collection of such charge or fee?

IN RE QUESTION NO. 1:

SDCL 32-34-13 provides:

Reports pursuant to § § 32-34-7 to 32-34-12, inclusive, and the information contained therein shall not be privileged or held confidential. The superintendent of the division of highway patrol shall collect two dollars for each copy of a report furnished to any person by his office. All sums collected for copies of such reports shall be deposited in the state highway fund.

Sections 32-34-7 through 32-34-12 basically require that all accidents involving injury or death or property damage of at least \$250 must be reported on prescribed forms by a law enforcement officer to the Division of Highway Patrol. The compilation and filing of such reports is done strictly at the state level and there is no statutory requirement that local law enforcement offices maintain copies of the reports.

The apparent intent of the Legislature was to impose primary responsibility on the Division of Highway Patrol with local law enforcement assisting in the reporting process. The law is silent as to the authority of a city police department to disseminate and charge for copies of accident reports which, by statute, are required to be made available at the state level.

The answer to your first question is no. Neither SDCL 32-34-13 nor any other provision of that chapter expressly or impliedly authorizes municipal police departments to issue and make a charge for copies of accident reports.

IN RE QUESTION NO. 2:

In my opinion, the answer to your second question is yes. Pursuant to SDCL 9-19-3 municipalities have the authority to enact ordinances as may be proper and necessary to carry into effect the powers granted thereto. This includes both powers expressly enumerated in statute and powers reasonably and necessarily implied therefrom. Another general restriction is that an ordinance may not be contrary to federal and state laws or their respective constitutions. 56 Am.Jur.2d 385 *Munic. Corps* § 361 *et seq.*

An ordinance providing for a municipal accident record reporting system and imposing a fee for copies of reports, provided it does not conflict with state law, would not violate any of

the above criteria. SDCL 9-12-3(1) grants municipalities the broad power to control finance and property. SDCL 9-18-2 requires municipal records to be available and open to public inspection. Implicit in this is the authority to reasonably regulate the use of and access to said records which, in my opinion, includes the authority to charge for reproductions in compliance with an ordinance to that effect. (See 1949-50 AGR 226.)

As I indicated in Memorandum Opinion 76-53, statutes often must be read in the light most practical for the people of South Dakota. Since it is a fact that obtaining automobile insurance coverage is contingent upon insurance companies' ability to obtain a driver's record, it is my opinion that the law should be interpreted as to make such records accessible subject to a reasonable charge for the service. Making these records available at the local as well as the state level certainly aids in accomplishing that purpose.

The answer to your second question is yes.

Respectfully submitted,

William J. Janklow
Attorney General

WJJ:LLV:jo