

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

September 4, 2001

Opinion No. 01-139

Authority of Local Law Enforcement Agencies to Charge a Fee to a State Agency for Criminal Background Checks

QUESTION

Do local law enforcement agencies have the authority to charge a fee to the Department of Children's Services for the processing of criminal background checks in regard to the approval of foster parents or child protective services investigations?

OPINION

No. Absent specific statutory authority, local law enforcement agencies lack authority to charge a fee to a state agency for the processing of criminal background checks.¹

ANALYSIS

As an arm of a political subdivision of state government, a local law enforcement agency derives its power from statutes passed by the General Assembly and may only exercise powers derived explicitly or by necessary implication from state law. *State ex rel. Witcher v. Bilbrey*, 878 S.W.2d 567, 571 (Tenn. App. 1994). Thus, a local law enforcement agency must be given the authority through constitutional mandate or acts of the Legislature to charge a fee to defray the cost of providing a service or benefit. *See* Op. Tenn. Atty. Gen. 97-077 (May 21, 1997).

The only legislative authority regarding local law enforcement agencies charging a fee for processing a criminal records check is the Public Records Act, Tenn. Code Ann. §§ 10-7-501, *et seq.* Under the

¹This opinion does not address the authority of the Tennessee Bureau of Investigation to charge a fee for the processing of a criminal history records check based on a fingerprint sample. *See* Tenn. Code Ann. §38-6-109. As provided in Tenn. Code Ann. §71-3-507, the Department of Children's Services may require a foster parent applicant to undergo a criminal background check of any kind or to supply a fingerprint sample for a criminal history records check to be conducted by the Tennessee Bureau of Investigation.

provisions of Tenn. Code Ann. § 10-7-503, “all state, county and municipal records. . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee . . . unless otherwise provided by state law.” The test for determining whether material is a public record is whether it was made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. *Griffin v. City of Knoxville*, 821 S.W.2d 921, 924 (Tenn. 1991). The Public Records Act has also been held to apply to computer records. *The Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297, 302 (Tenn. 1998).

Generally, a custodian of public records is authorized under Tenn. Code Ann. § 10-7-506(a) to charge the actual costs incurred in disclosing a public record in the exact format requested by a member of the public. *The Tennessean*, 979 S.W.2d at 305. In addition, a custodian of public records of convictions of traffic violations or any other state, county or municipal public offenses is authorized by Tenn. Code Ann. § 10-7-507 to charge a fee that would reasonably defray the costs of producing and delivering copies of such records. Accordingly, a local law enforcement agency is authorized under the Public Records Act to charge a reasonable fee for processing a criminal records check requested by a citizen.

The next issue to be resolved, however, is whether this statute applies to a request by a state agency. It is well settled in Tennessee that the state and its political subdivisions are not subject to a statute unless specifically mentioned therein or unless application thereto is necessarily implied. *Harrison Construction Company v. Gibson County Board of Education*, 642 S.W.2d 148, 151 (Tenn. App. 1982). Neither Tenn. Code Ann. § 10-7-506(a) nor Tenn. Code Ann. § 10-7-507 specifically authorizes a fee to be charged to the state or its subdivisions. Therefore, it is our opinion that local law enforcement agencies lack authority to charge a fee to the Tennessee Department of Children’s Services for the processing of criminal background checks.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

DIANNE STAMEY DYCUS
Deputy Attorney General

Requested by:

George W. Hattaway
Commissioner
Department of Children's Services
7th Floor, Cordell Hull Bldg.
436 Sixth Avenue North
Nashville, TN 37243-1290