



December 10, 2008

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Attn: Terry Mutchler  
Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, Plaza Level  
Harrisburg, PA 17120-0225

Re: Advisory Opinion

Dear Director Mutchler:

Our office represents the Pennsylvania Recorder of Deeds Association ("PRODA"). PRODA is an organization whose membership consists of all sixty-seven (67) Recorders of Deeds within the Commonwealth of Pennsylvania. As you may be aware the offices of the Recorders of Deeds throughout the Commonwealth of Pennsylvania were created by statute and are charged with the obligation in accordance with applicable statutes of maintaining public records related to all nature of real estate activities within the Commonwealth. It includes, without limitation, recording of Deeds, Mortgages, Assignments, Easements, Mortgage Satisfaction Pieces, Subdivision Plans, Uniform Commercial Code Financing Statements related to real estate, Military Service Discharge Statements (DD-214) and etc. These records have been "open" (with only some very limited exceptions) from the inception of the creation of these offices.

We have been requested by PRODA to obtain an advisory opinion from your office in accordance with the provisions of Act 3 of 2008 (the "Act") the final provisions of which become effective on January 1, 2009. The provisions of Section 306 of the Act, "Nature of Document" provide "nothing in this Act shall supersede or modify the public or non-public nature of a record or document established in federal or state law, regulation or judicial order or decree", the provisions of Section 3101.1 of the Act "Relation to Other Laws" state "if the provisions of this Act regarding access to records conflict with any other federal or state law, the provisions of this Act shall not apply" raise a significant issue as to whether or not the provisions of the Act apply to the Recorders of Deeds in the Commonwealth of Pennsylvania as to their real estate records. In reviewing those Sections it is our belief that a real question exists that the Act does not apply to Recorders of Deeds. Clearly the regularly kept and historically kept real estate records maintained by Recorders of Deeds in compliance with statutory provisions have been and remain a public record, something which no Recorder disputes. Certain parts of the Act may conflict with provisions of state law as they relate to

the functions of Recorder of Deeds statutorily established. Recorders have long followed and established procedures to assure public access to their records which, it is offered, the Act did not intend to change or affect. Recorders understand that other information such as budget issues and communications are covered by the Act. They only seek guidance on what has always been public. An opinion from your offices on that issue we believe is necessary so Recorders may know how to proceed going forward. We request you issue an opinion on this question.

If in fact your determination is that the Act does apply to regularly kept public real estate records maintained by the Recorders of Deeds throughout the Commonwealth other issues need to be settled as they relate to the charges to be made for providing information. It should be understood that since the Recorders of Deeds records have always been, as required by statute, available for inspection by the public that all Recorders have procedures and charges in place which have facilitated over time the providing of information in these records to those who may have made inquiry. Many Recorders throughout the Commonwealth have already made some portion of their records available online and other methods of obtaining these records have been available to title searchers, both through title companies, attorneys and others and the public having had access to these records as required by statute.

When you recently published your "Fee Structure" pursuant to the provisions of Section 1307 of the Act you specifically mention Recorders of Deeds. While your comments in that Fee Structure seem to assume the Recorders of Deeds are covered I believe the questions asked above need to be addressed before that determination is made. If covered, a further question must be addressed in that under the Recorder of Deeds fee bill applicable to Second Class A through Eighth Class counties would in our opinion supersede any fees which may be outlined in your fee structure. Most particularly there is a provision in 42 P.S. Section 21051 which states "where no fee is specified the fee shall be set by the Recorder of Deeds". Many Recorders throughout the Commonwealth have implemented fees to facilitate obtaining information from their offices which have been in effect for long periods of time. It is our belief that any such fees which have been implemented and may in the future be implemented are not affected by the Act. Your opinion in that regard is requested.

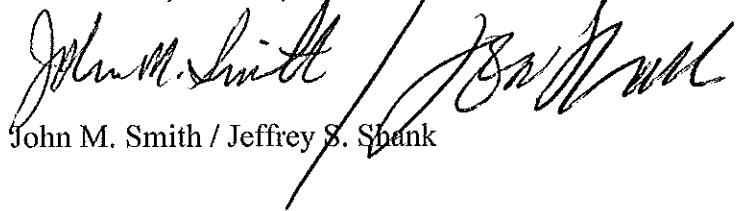
A further issue requiring clarification is found in Section 1307 "Fee Limitations" of the Act. If your opinion is that the Recorders of Deeds are covered by the Act for even their already public real estate records then your opinion is needed as to whether or not the regularly kept records of the Recorders of Deeds would fall under Section 1307(4) which states "the following apply to complex and extensive data sets, including geographic information systems or integrated property assessments lists". That language would certainly support an argument that the Recorder of Deeds records are "complex and extensive data sets" meaning that the Recorders may charge the fees under the Act based on reasonable market value of the same or closely related data sets.

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Please feel free to contact me concerning the requests herein if you have any questions otherwise I will look forward to receipt of your advisory opinions on the questions raised herein. Thank you very much.

Very truly yours,

GINGRICH, SMITH, KLINGENSMITH & DOLAN

Handwritten signatures of John M. Smith and Jeffrey S. Shank, written in black ink. The signature of John M. Smith is on the left, and the signature of Jeffrey S. Shank is on the right, separated by a vertical line.

John M. Smith / Jeffrey S. Shank

JMS:sls

pc Valerie McDonald-Roberts, PRODA President

/via email [valerie.mcdonald-roberts@allgehenycounty.us](mailto:valerie.mcdonald-roberts@allgehenycounty.us)

Wendy Welfley, PRODA Secretary / via email [wwelfley@perryco.org](mailto:wwelfley@perryco.org)



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF OPEN RECORDS

January 16, 2009

Mr. John M. Smith  
Mr. Jeffrey S. Shank  
*Gingrich, Smith, Klingensmith & Dolan*  
45 East Orange Street  
Lancaster, PA 17602

**Re: *Advisory Opinion 2009-01***  
***Pennsylvania Recorders of Deeds Association***

Dear Mr. Smith and Mr. Shank,

Thank you for writing to the Office of Open Records ("OOR") with your December 10, 2008 request for an Advisory Opinion pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, ("RTKL").

On behalf of the Pennsylvania Recorders of Deeds Association ("PRODA"), you sought an Advisory Opinion of the Office of Open Records to determine whether the RTKL applies to Recorders of Deeds in the Commonwealth and, if so, whether the fee structure established by the Office of Open Records capping standard photocopies at .25 per page is applicable to Recorders of Deeds.

Your request for an Advisory Opinion is granted. Please be advised that, for the reasons set forth below, Recorders of Deeds in the Commonwealth are subject to the RTKL, but they are not subject to the per copy fee established by the Office of Open Records.

**Applicability of the RTKL to Recorders of Deeds**

The RTKL applies to all local agencies, Commonwealth agencies, judicial agencies and legislative agencies. 65 P.S. §67.301. Section 102 of the Act, entitled "*Definitions*," states:

*"Local Agency." Any of the following:*

- (1) *Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.*
- (2) *Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity." 65 P.S. §67.102.*

The Pennsylvania Constitution, *Article IX, Sec. 4*, entitled “*County Government*,” provides that “[c]ounty officers shall consist of commissioners, controllers or auditors, district attorneys, public defenders, treasurers, sheriffs, registers of wills, recorders of deeds, prothonotaries, clerks of the courts, and such others as may from time to time be provided by law.” Therefore, Recorders of Deeds, as county officers, are subject to the provisions of the RTKL as defined in 65 P.S. §67.102.

Your letter correctly states that section 3101.1 of the RTKL, entitled “*Relation to other laws*,” provides that “[i]f the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply.” PRODA employs this language to support its assertion that Recorders of Deeds are exempt from the RTKL. Further, PRODA’s request for an Advisory Opinion states that “[c]ertain parts of the Act may conflict with provisions of state law as they relate to the functions of Recorder of Deeds statutorily established.” However, PRODA failed to identify which, if any, provisions of state law present an actual or perceived conflict with the RTKL. Moreover, PRODA failed to cite any state or federal law or regulation demonstrating that the new RTKL does not apply to Recorders of Deeds. Again, as defined in 65 P.S. §67.102, Recorders of Deed are subject to the provisions of the RTKL.

#### **Applicability of OOR Fees to Recorders of Deeds**

PRODA additionally seeks guidance as to whether Recorders of Deeds are subject to the fee schedule established by the Office of Open Records pursuant to 65 P.S. §67.1307. The RTKL states, in pertinent part, that “[e]xcept as otherwise provided by statute, no other fees may be imposed unless the agency necessarily incurs costs for complying with the request, and such fees must be reasonable,” 65 P.S. §67.1307(g). The OOR’s fee schedule, therefore, applies to local agencies unless another statute authorizes separate fees to be charged.

The Judicial Code, with respect to Second Class A through Eighth Class counties, governs applicable fees for records of Recorders of Deeds, 42 P.S. §21051. That statute permits Recorders of Deeds to assess a \$0.50 per copy fee. Accordingly, 42 P.S. §21051 preempts the fee schedule established by the OOR regarding duplication fees for records held by the Recorders of Deeds, 65 P.S. §67.1307(g). Recorders of Deeds are, therefore, permitted to charge \$0.50 per copy.

This information is also available on our website, <http://openrecords.state.pa.us> under the Frequently Asked Questions section.

Please contact our office at 717.346.9903 if you have further questions.

Respectfully,



Terry Mutchler  
Executive Director