



ALAN WILSON  
ATTORNEY GENERAL

November 13, 2015

Ms. Marci Andino  
Executive Director  
South Carolina Election Commission  
Post Office Box 5987  
Columbia, South Carolina 29250

Dear Ms. Andino:

You have requested an opinion of this Office related to S.C. Code Ann. § 7-3-20(C)(12) (Supp. 2014), providing that the executive director of the South Carolina Election Commission (“the Commission”) shall “furnish at reasonable price any precinct lists to a qualified elector requesting them.” Pursuant to the Commission’s website, the minimum charge for printed lists or mailing labels is \$75.00 and the minimum charge for CDs is \$160.00. You provide that these fees are used to fund staff and expenses related to the program. Questioning this practice, your letter indicates that several individuals have requested lists of registered voters pursuant to the Freedom of Information Act. Accordingly, you ask if this Office can provide guidance on Section 7-3-20(C)(12) and the Freedom of Information Act in relation to the fees charged for voter registration lists. Our analysis follows.

#### Law / Analysis

In answering your question, we find the case of Martin v. Ellisor, 266 S.C. 377, 223 S.E.2d 415 (1976) highly informative. In this case, a copy of a computer tape containing the names and addresses of all registered electors was requested pursuant to the former version of S.C. Code Ann. § 7-3-20(C)(12)<sup>1</sup> as well as the Freedom of Information Act. The Court first pointed out that because it determined the requestor was entitled to a copy of the computer tape pursuant to former § 7-3-20(C)(12), analysis of the Freedom of Information Act was unnecessary. Id. at 379, 223 S.E.2d at 416. Since voter registration lists are undoubtedly able to be obtained pursuant to S.C. Code Ann. § 7-3-20(C)(12), like the Court in Martin, we believe the Freedom of Information Act need not be analyzed. Rather, it is our opinion that the more pertinent question is one of statutory construction and concerns what is meant by the term “reasonable price” as it is used within S.C. Code Ann. § 7-3-20(C)(12) (Supp. 2014).

We begin with noting that the primary rule of statutory construction is to ascertain and effectuate the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citation omitted). What a legislature says in the text of a statute is considered the best

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<sup>1</sup> The provision under analysis was S.C. Code § 23-31(c)(11) which, like S.C. Code Ann. § 7-3-20(C)(12) (Supp. 2014), directed the Executive Director of the South Carolina Election Commission to “furnish at reasonable price any and all precinct lists to any qualified elector requesting same.”

evidence of the legislative intent or will. *Id.* (quotations omitted). Thus, when a statute is plain and unambiguous, it becomes the duty of the court to apply the statute literally because the legislative design is unmistakable. *Martin v. Ellisor*, 266 S.C. 377, 381, 223 S.E.2d 415, 417 (1976). In ascertaining the legislative intent in the enactment of former Section 7-3-20(C)(12), the *Martin* Court emphasized the unambiguous nature of the section providing that: “[t]he statute is explicit, admitting of no construction or application other than that which it clearly demands.” *Id.* at 382, 223 S.E.2d at 418. Thus, the purpose and intent of the statute is clearly to provide information, and specifically precinct lists, to certain members of the public, *i.e.*, qualified electors. Because of the clear and unambiguous language of Section 7-3-20(C)(12), as explained by the *Martin* Court, we are bound to apply the statute’s plain language and need not resort to the rules of construction.

As we have concluded in prior opinions of this Office, what is considered reasonable is a question of fact and depends on the circumstances at hand. *See, e.g., Op. S.C. Att’y Gen.*, 1992 WL 575646 (July 23, 1992) (discussing the reasonableness of certain charges made by a public body for documents disclosed pursuant to the Freedom of Information Act). However, when interpreting the plain language of Section 7-3-20(C)(12), the *Martin* Court discussed, in dicta, the “reasonable price” requirement contained in former Section 7-3-20(C)(12). *Id.* at 379, 223 S.E.2d at 416. We believe this discussion provides great insight to your questions. Again, the issue before the Court was whether the requestor of a precinct list could demand that the list be produced by the Commission in a preferred “computer tape” format. *Id.* Throughout the Court’s analysis, “reasonable price” was continuously linked to the cost of reproduction. *Id.* First, the Court provided that the requestor: “has agreed to pay a reasonable price for the *cost incurred in reproducing* the computer tape. . . .” *Id.* (emphasis added). The Court also stated that: “[r]eproduction of the computer tape is vastly less expensive than the computer printout, but more costly than a microfiche. For purposes of this appeal, we do not consider the varying *costs of reproducing* the information to be material. *Martin* is willing to pay the *cost of reproducing* the tape. . . .” *Id.* (emphasis added). From the Court’s discussion, it is clear that it considered “reasonable price,” as used within former S.C. Code Ann. § 7-3-20(C)(12), to coincide with the cost of reproduction.

Chief Justice Lewis’ dissent in *Martin* also discusses the “reasonable price” requirement of the statute, providing that: “[t]he statute as the majority says, does plainly and unambiguously require that the information be furnished at a ‘reasonable price.’ . . . What is a ‘reasonable price’ depends upon a variety of considerations. Here it would depend *upon the form in which the information is required to be furnished.*” *Id.* at 384, 266 S.C. at 419 (Lewis, C.J., dissenting) (emphasis added). Accordingly, the dissent strengthens the conclusion that the price for precinct lists requested by qualified electors must primarily be determined by the reproduction cost of the information.

Importantly, we believe *Martin*’s discussion indicating that the price for precinct list must be centered upon the cost of reproduction fits squarely within the legislative intent in enacting the statute: to provide precinct lists to qualified electors. As such, it is our opinion that the price for precinct lists requested by a qualified elector should be set in close relation to the cost of

reproduction to facilitate distribution to requestors rather than at prices to create revenue for the Commission.

Although we do not believe analysis under the Freedom of Information Act (“the FOIA”) is necessary because the right to receive a copy of precinct lists is already granted pursuant to S.C. Code Ann. § 7-3-20(C)(12) (Supp. 2014), it is our opinion that if a court were to determine precinct lists were disclosable under the FOIA, there should be little variation in price regardless of whether the precinct lists were disclosed under the FOIA or Section 7-3-20(C)(12). To explain, the Freedom of Information Act provides that a:

public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document. . . The records must be furnished at the lowest possible cost to the person requesting the records.

S.C. Code Ann. § 30-4-30(b) (2007). The same section also provides that “[n]othing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public not requiring a reasonable deposit of these costs before searching for or making copies of records. . . .” *Id.* Like our interpretation of S.C. Code Ann. § 7-3-20(C)(12), the price that can be charged for documents disclosed under the FOIA is also centered upon the cost of reproduction with the overall intent making public records available to the public. We have cautioned in past opinions that the requirements for viewing and copying public records requested under the FOIA “must be carefully considered to make sure it does not, by design or implication, inhibit or reduce the public’s ability to examine public records.” *Op. S.C. Att’y Gen.*, 1992 WL 575646 (July 23, 1992); *Op. S.C. Att’y Gen.*, 1985 WL 166033 (June 26, 1985); *Op. S.C. Att’y Gen.*, 1976 WL 23129 (Nov. 4, 1976). Similarly, because we believe the intent of Section 7-3-20(C)(12) is to provide information, specifically precinct lists, to qualified electors, we believe any price set by the Commission for precinct lists should be carefully considered to ensure that the cost does not diminish a qualified elector’s ability to obtain them.

### **Conclusion**

In conclusion, we reiterate that what is determined to be “reasonable price” as used within S.C. Code Ann. § 7-3-20(C)(12) is ultimately a question of fact that can only be resolved by a court. However, with the South Carolina Supreme Court addressing the issue in dicta in *Martin*, we believe there is strong support that a court would find a “reasonable price” for precinct lists requested by a qualified elector must be set with the primary consideration of the cost of reproducing the lists in mind. It is also our belief that this conclusion coincides with the legislative intent in the enactment of Section 7-3-20(C)(12), being to make precinct lists available to qualified electors.


While we have determined that analysis of your questions under the Freedom of Information Act is not necessary because precinct lists are undoubtedly available pursuant to Section 7-3-20(C)(12), the charges permitted under the FOIA for the disclosure of public records

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are centered upon the cost of reproduction of the requested documents. Therefore, based on our interpretation of "reasonable price" as used in Section 7-3-20(C)(12), we believe there should be little variation between the prices charged for precinct lists disclosed under the FOIA, if a court were to determine such was permissible, and precinct lists disclosed under Section 7-3-20(C)(12).

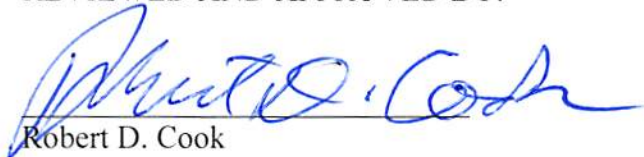
If we can answer any additional questions, please feel free to contact our Office.

Very truly yours,



Anne Marie Crosswell  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General