

COURTS OF RECORD: CLERKS, CLERKS' OFFICES AND RECORDS - RECORDS, RECORDATION AND INDEXING GENERALLY.

CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (COUNTY AND CITY OFFICERS).

COUNTIES, CITIES AND TOWNS: COUNTY, CITY AND TOWN OFFICERS GENERALLY.

COSTS, FEES, SALARIES AND ALLOWANCES: FEES.

Circuit court clerk authorized to provide and charge user fee for remote access to nonconfidential court records and to establish security measures to protect confidential records has no authority to place public records-judgment liens, deeds, marriage licenses, wills and court dockets-on worldwide computer network.

The Honorable J. Jack Kennedy Jr.

Clerk, Circuit Court of Wise County and the City of Norton

June 26, 1996

You ask whether a circuit court clerk may place public records, such as judgment liens, deeds, marriage licenses, wills and court dockets, "on-line" electronically, thereby making such records available on the Internet.¹

Article VII, § 4 of the Constitution of Virginia (1971) creates the office of clerk of the circuit court, and provides that a clerk's duties "shall be prescribed by general law or special act."² As a rule, clerks of court have no inherent powers, and the scope of their powers must be determined by reference to applicable statutes.³

The duties of a clerk of court regarding public records are set forth generally in §§ 1740 through 1792 of the *Code of Virginia*. In the absence of a legislative mandate specifying a particular recording method, a clerk may establish a system that satisfies the statutory purpose for maintaining the records.⁴ The system established, however, must be based on authority found within the statutory framework.⁵

I can find no general statutes setting forth the duties of a clerk of court for maintaining public records that expressly authorize a clerk to provide access to such records through a system such as the Internet. Only one of the general provisions, § 1759.2, arguably would provide a basis to infer such authority.

Section 1759.2 authorizes a circuit court clerk to "provide remote access to all nonconfidential court records maintained by his office." The section requires a clerk who provides such access to establish security measures to protect confidential records and to prevent remote access users from modifying or destroying any records. In addition, § 14.1118.1 requires a clerk who provides remote access to records under § 1759.2 to charge each user a fee, which "may be assessed for each inquiry or upon actual connect time."

While the provisions of § 1759.2 may indicate a legislative intent to expand access to public records and to permit access through electronic means, the language does not suggest that the legislature contemplated the type of computer access and information dissemination that would result from placing the records on a system such as the Internet.⁶ The fee requirement imposed by § 14.1118.1, in fact, indicates that the General Assembly did not intend § 17.159.2 to encompass this type of remote access to records. I am aware of no other statutory provision from which to infer such a legislative intent and which would authorize a clerk to place public records on a worldwide computer network.⁷

Therefore, I am of the opinion that a circuit court clerk does not have the statutory authority to place public records, such as judgment liens, deeds, marriage licenses, wills and court dockets, "on-line" electronically, thereby making such information available on the Internet.

¹It is my understanding that the Internet is a vast computer network that, among its services, allows any person connected by computer to that network access to files of information provided to the system. You indicate that you are interested in providing information to the Internet through a Web site. My understanding is that a Web site provides a link whereby information on a computer file is loaded to a server, a computer connected to the Internet 24 hours a day.

²*See also* VA. CODE ANN. § 15.140.1.

³*See* 1987-1988 Op. Va. Att'y Gen. 80, 81.

⁴*See* 1989 Op. Va. Att'y Gen. 29, 3132 (clerk's system for maintaining financing statements for access by title examiners may vary, depending on extent to which office system is computerized).

⁵*See* 1989 Op. Va. Att'y Gen., *supra*, at 31 (§ 1779(9), redesignated as § 1779(I), authorizes clerk to maintain indices on computer, word processor, microfilm, microfiche or other micrographic process). *Compare* 1977-1978 Op. Va. Att'y

Gen. 61, 62 (absent statutory authority to use microphotographic process to preserve books, no means for clerk's office to reduce storage problems resulting from requirement to preserve land books).

⁶In contrast, at its 1996 Session, the General Assembly indicated a clear legislative intent to permit on-line access to public information by its enactment of the Virginia Information Providers Network Authority Act as a new chapter 46 in Title 9. *See* Ch. 1044, 1996 Va. Acts Reg. Sess. That Act creates the Virginia Information Providers Network Authority and grants the Authority the power to establish a centralized electronic information system to provide public information via dial-in modem or continuous link to the public through subscription or through public libraries. *See id.* §§ 9351, 9350 (defining "Authority," "Gateway"). The Act applies primarily to public information stored by state agencies and does not pertain to records under the control of the circuit court clerks, except on terms upon which the clerks agree. *See id.* §§ 9355, 9356(C).

⁷Since I conclude that a clerk has no statutory authority to disseminate nonconfidential public records through on-line electronic connections, it is unnecessary to consider whether any statutory privacy limitations would restrict the dissemination. I note, however, that public records generally are not protected by statutory privacy limitations. *See, e.g.,* Op. Va. Att'y Gen.: 1987-1988 at 255 (criminal trial exhibits); 1981-1982 at 284 (names and addresses of health professionals licensed by Department of Health Regulatory Boards); 1978-1979 at 313 (minutes of public meetings of public bodies).