

IN THE SUPREME COURT OF OHIO

THE STATE EX REL. JENNA L. ARNOTT,
2861 St. Rt. 124
Racine, Ohio 45771

Relator,

ORIGINAL ACTION IN MANDAMUS

09-0429

Case No. _____

V.

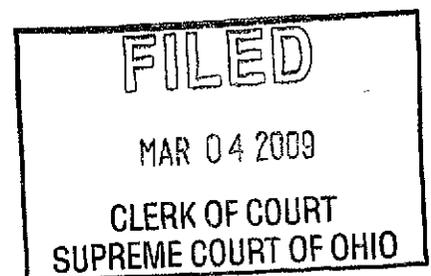
THE BOARD OF SYRACUSE/RACINE REGIONAL
SEWER DISTRICT,
P.O. Box 201
Racine, Ohio 45771

Respondent.

PETITION FOR A WRIT OF MANDAMUS

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PETITION FOR A WRIT OF MANDAMUS

Now comes the Relator, Jinna L. Arnott (hereinafter “Relator”), by and through the undersigned counsel, who hereby submits her Petition in Mandamus against Respondent, Board of Syracuse/Racine Regional Sewer District (hereinafter the “Respondent” or the “Board”) and states as follows:

I. JURISDICTION AND VENUE

This is an action for a writ of mandamus pursuant to Ohio Revised Code Section 2731, O.R.C. 149.43 *et. Seq.*, Ohio Constitution, Article IV, Section 2(B)(1)(b), and the common law of the State of Ohio. All events recounted in this Petition occurred in the County of Meigs, Village of Racine, Ohio.

II. PARTIES

Relator is a person within O.R.C. 149.43 who made a proper written and oral request for copies of public records held by Respondent pursuant to the Ohio Public Records Act (hereinafter “the Act”).

Respondent is a Board composed of members appointed by the Village of Syracuse, the Village of Racine and the Sutton Township Board of Trustees and is a political subdivision as described in O.R.C. 6119.011(B). Respondent is a public office within the Act and must retain public records and provide copies of those records at cost and in a reasonable time.¹

¹ Respondent granted Relator access to inspect public records and access is not a part of this Petition.

III. FACTS

1. On January 12, 2009, Relator submitted a written Public Records Request pursuant to Ohio Revised Code sec. 149.43 (B) (1) and requested access to inspect and copy public records in the possession and control of Respondent.
2. On January 21, 2009, approximately eight days after Relator's request to inspect and obtain copies of records, the Board adopted Motion No. 93-09 to charge two-dollars (\$2) per page for copying Board documents.
3. On February 12, 2009, Relator, accompanied by her legal counsel arrived at the Board offices to inspect the requested records.
4. Following initial inspection of the records, Relator requested that four (4) single page Resolutions be copied.
5. Relator was informed by the District Clerk/Office Manager (hereinafter "Clerk") that a charge of two-dollars (\$2) per page would be assessed based on the costs charged by the Meigs County Court and the Motion adopted by the Board.
6. Relator's legal counsel informed the Clerk that a statute dictated charges assessed by the Courts and that the Act governed charges for copying public records.
7. Relator's legal counsel informed the Clerk that, pursuant to the Act, the charges must be "reasonable" based on "actual cost" for duplication.
8. The Clerk stated that the Board's Motion controlled.
9. Because Relator believed the charge of two-dollars (\$2) per page was contrary to law, exorbitant and meant to punish her for exercising her rights, Relator was discouraged from purchasing copies of the Resolutions and further discouraged her from purchasing other documents she wanted copied that day.

10. Following a subsequent visit, Relator terminated her inspection of the public documents without copies because of the exorbitant cost.
11. Relator knows that the Main Branch of the Meigs County Public Library charges ten-cents (.10) per page; that the Federal Post office charges fifteen-cents (.15) per page and; that the Syracuse Board of Public Affairs charges, on a sliding scale, twenty-five cents (.25) per page for an initial, limited number of pages of public records.
12. On February 18, 2009, Realtor's legal counsel submitted to the Solicitor for the Village of Racine a letter contesting the exorbitant charges for copying public records, citing controlling statutory and case law declaring Respondent's charges as unreasonable and contrary to law. Relator's counsel also cited the charges assess by the entities in Paragraph 11, above.
13. Relator's legal counsel received no response to his attempt to forestall this litigation.

II. LAW

14. Ohio Revised Code sec. 149.43(B)(1) states that upon request, copies of public records shall be provided within a reasonable time at "cost."
15. "Cost" as used in sec. 149.43 has been determined to mean "actual cost" of duplication. The elements constituting "actual cost" of duplication, for example, are described in O.R.C. sec. 149.43(F)(1) and in numerous court decisions.
16. Assessing an unreasonable charge for public documents is a violation of the Public Records Act.

17. The District acted in bad faith and contrary to public policy in adopting a Motion on January 21, 2009 (approximately eight days after Relator's request to view records) assessing charges of two-dollars (\$2) per page in order to discourage copying of public documents by Relator and the general public.
18. Relator incorporates the allegations contained in paragraphs 1 through 17 as if fully rewritten herein.
19. Granting this Petition for Mandamus will benefit the general public and further the intent of the Public Records Act that copies of public records be provided to the public at a cost that is not intended to discourage public record requests
20. The charges assessed by the District are neither related to nor based on actual cost of reproduction of the records and is contrary to law and public policy.
21. Discouraging copying of public records by assessing unreasonable charges for copying is a violation of the Act's mandate that public officials and offices provide records in a timely manner.
22. Relator has no plain and adequate remedy in the ordinary course of law, thus entitling her to seek relief through the extraordinary Writ of Mandamus.
23. Acting in bad faith, Respondent deliberately refused to adhere to the law by ignoring Relator's attempt to forestall this litigation and is now estopped from raising compliance with the Act as a defense or basis of a Motion to this Petition.
24. The duty of Respondent to perform the act and the right of the Relator to performance of the act are clear and apparent and no valid excuse can be given for not performing the act,

THEREFORE, Relator respectfully requests this Court to issue a Preemptory and/or Alternative Writ.

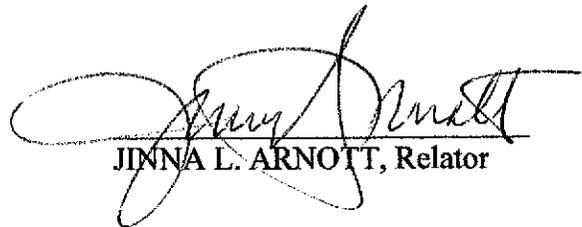
WHEREFORE, Relator requests that the Court grant this Petition for Writ of Mandamus and that court costs, reasonable attorney's fees and statutory damages from the date of the filing of this action be awarded to Relator for Respondents' failure to charge actual and reasonable costs for copying public records; failure to produce copies of the requested records in a reasonable time and; any other relief to which Relator is entitled by law and equity.

RESPECTFULLY SUBMITTED,


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COUNSEL FOR RELATOR
JINNA L. ARNOTT

STATE OF OHIO)
) **SS: AFFIDAVIT OF JINNA L. ARNOTT**
COUNTY OF MEIGS)

I, JINNA L. ARNOTT, Relator in the instant action, being first duly cautioned and sworn, do state that the facts alleged in the foregoing Petition for a Writ of Mandamus are true and accurate to the best of my knowledge and belief.


JINNA L. ARNOTT, Relator

Subscribed and sworn to before me by the said JINNA L. ARNOTT, who is known to me or has proven her identity to me, on this 23 day of February 2009.



Notary Public

