

Note from the Attorney General's Office:

1989 Op. Att'y Gen. No. 1989-073 overruled
in part at paragraph 5 by 2022 Op. Att'y
Gen. No. 2022-018.

OPINION NO. 89-073**Syllabus:**

1. Shorthand notes taken pursuant to R.C. 2301.20 and transcripts prepared pursuant to R.C. 2301.23 by an official shorthand reporter or an assistant shorthand reporter of the court of common pleas are the property of the court of common pleas.
2. Shorthand notes taken pursuant to R.C. 2301.20 and transcripts prepared pursuant to R.C. 2301.23 are public records under R.C. 149.43, unless the notes or transcripts include or comprise a record which is excepted from the definition of "public record" in R.C. 149.43(A)(1).
3. Under R.C. 149.43(B), a person seeking to inspect or receive a copy of the shorthand notes taken and filed pursuant to R.C. 2301.20 by an official shorthand reporter or assistant shorthand reporter of the court of common pleas may direct the request to inspect or receive a copy to the official shorthand reporter of the court of common pleas.
4. Under R.C. 149.43(B), a person seeking to inspect or receive a copy of the transcript prepared pursuant to R.C. 2301.23 by a shorthand reporter or assistant shorthand reporter of the court of common pleas may direct the request to inspect or receive copies to the official shorthand reporter of the court of common pleas. If a transcript is filed with the court of common pleas, any person seeking to inspect or receive a copy of the transcript may direct the request to inspect or receive a copy to the clerk of the court of common pleas.
5. Under R.C. 149.43(B) public records must be made available "at cost" to any person who requests a copy. A public office, in its sound discretion, may adopt a reasonable policy setting a fee for copies obtained from the public office. The fee should reflect the actual costs involved in making a copy, unless the cost is otherwise set by statute.
6. Under R.C. 2301.24, the judges of the court of common pleas shall fix the fee for copies of transcripts obtained from the official shorthand reporter and the assistant shorthand reporter of the court of common pleas.
7. Under R.C. 2303.20(G), a clerk of the court of common pleas shall charge a fee of one dollar per page for copies with certificate and seal of a transcript filed with the clerk. For copies not including certificate and seal, the clerk of the court of common pleas, may, under the direction of the court of common pleas, pursuant to R.C. 2303.26 and R.C. 2301.04, adopt a

reasonable policy setting fees that reflect the actual costs involved in making a copy.

To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 7, 1989

I have before me your request for my opinion regarding notes and transcripts prepared by court reporters¹ in civil or criminal actions in the court of common pleas. Specifically, you have asked that my response address four primary questions:

1. To whom do reporters' notes and transcripts belong, the court or the reporters?
2. Are reporters' notes and transcripts "public records" under Section 149.43, Ohio Revised Code?
3. If the court has purchased a copy of a transcript from a reporter, or in some other way the transcript has been filed in the court's case file, may the court then freely allow copies of the transcript to be made from the court's copy at the court's customary copying charge, or must the court refer the requesting party to the reporter for copies at the reporter's rates, which have been set and approved by the court.
4. To which party, the reporter or the court, should a person seeking the release of notes or a transcript as a "public record" deliver the request?

A thorough discussion of court reporters' notes and transcripts requires an initial review of the court reporter's statutory authorization, status and duties. The court of common pleas appoints a stenographic reporter as official shorthand reporter of the court and such assistant shorthand reporters as the court's business requires. R.C. 2301.18; R.C. 2301.19. *See State ex rel. Bartlett v. Ludeman*, 24 Ohio St. 2d 156, 265 N.E.2d 293 (1970) (court of common pleas may appoint only one "official shorthand reporter"; all other court reporters appointed are "assistant shorthand reporters"). Although R.C. 2301.20 requires a trial judge to cause a shorthand reporter to take notes of an action in the common pleas court upon the request of a party or a party's attorney, a court reporter is not a personal employee of that party or that attorney. 1946 Op. Att'y Gen. No. 1143, p. 598. A court reporter is, instead, a public employee and an officer of the court. *Id.* *See also* R.C. 2301.22 (reporters' compensation fixed by court of common pleas; county auditor shall issue warrants on the county treasurer for payment of reporters' compensation); R.C. 2301.24 (reporters' compensation for making transcripts and copies fixed by the court of common pleas); 1988 Op. Att'y Gen. No. 88-025. A court reporter is not, however, a public official. *State ex rel. Appleman v. Conley*, 124 Ohio St. 205, 178 N.E. 207 (1931).

R.C. 2301.20 sets forth the primary duty of the official shorthand reporter of the court of common pleas to record oral proceedings before the court. R.C. 2301.20 states, in pertinent part:

Upon the trial of a civil or criminal action in the court of common pleas, if either party to the action or his attorney requests the services of a shorthand reporter, the trial judge shall grant the request, or may order a full report of the testimony or other proceedings. In either case, the shorthand reporter shall take accurate shorthand notes of the oral testimony or other oral proceedings.

¹ Your letter identifies the "official shorthand reporter" and "assistant shorthand reporters" of the court of common pleas as the subject of your request. My discussion of court reporters' notes and transcripts, thus, will necessarily focus on the notes and transcripts of court reporters appointed under R.C. Chapter 2301.

Shorthand notes of a court reporter are required to be transcribed by the terms of R.C. 2301.23 which states, in part:

When shorthand notes have been taken in a case as provided in section 2301.20 of the Revised Code, if the court, or either party to the suit or his attorney, requests transcripts of any portion of such notes in longhand, the shorthand reporter reporting the case shall make full and accurate transcripts of the notes for the use of such court or party. The court may direct the official shorthand reporter to furnish to the court and parties copies of decisions rendered and charges delivered by the court in pending cases.

See also Ohio R. Crim. P. 22; Ohio R. C.P. Superintendence 10(A); *White v. White*, 50 Ohio App. 2d 263, 362 N.E.2d 1013 (Cuyahoga County 1977) (a court is required to provide a shorthand reporter to record evidence if properly requested by a party to a suit or an attorney of a party); Op. No. 88-025. Court reporters may perform other services. *See, e.g.*, R.C. 2301.25 (taking of testimony of witnesses before grand jury); R.C. 2301.26 (as referee, taking and reporting of evidence in causes pending in any of the courts of this state).

Turning now to your first question regarding the ownership of a court reporter's notes and transcripts, it is helpful to read the various provisions of R.C. Chapter 2301 in conjunction with R.C. Chapter 149 which regulates records of public offices. R.C. 149.011(G) provides a general definition of "records" as including "any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." "Public office" is defined by R.C. 149.011(A) as including "any state agency, public institution, political subdivision, or any other organized body, office, agency, institution or entity established by the laws of this state for the exercise of any function of government." A court of common pleas is a "state agency" as defined by R.C. 149.011(B), which includes "every department, bureau, board, commission, office or other organized body established by the constitution and laws of this state for the exercise of any function of state government, including...any court or judicial agency..." (emphasis added). The court of common pleas is established by the Ohio Constitution and statutory provisions. Ohio Const. Art. IV, §1 ("[t]he judicial power of the state is vested in...courts of common pleas"); Ohio Const. Art. IV, §4(A) ("[t]here shall be a court of common pleas...serving each county of the state"); R.C. 2301.01 ("[t]here shall be a court of common pleas in each county"); R.C. 2305.01 (court of common pleas has original jurisdiction in civil cases); R.C. 2931.03 (court of common pleas has original jurisdiction in criminal cases); *see also* R.C. 1.60 ("[a]s used in Title I of the Revised Code, 'state agency', except as otherwise provided in the title, means every organized body, office, or agency established by the laws of the state for the exercise of any function of state government"); *State ex rel. Harmon v. Bender*, 25 Ohio St. 3d 15, 494 N.E.2d 1135 (1986); 1989 Op. Att'y Gen. No. 89-029 at 2-120 n.1.

A trial court, such as the court of common pleas, is required to make and keep a record of its proceedings. *Harmon*. The duty to record is often discharged by a court reporter taking stenographic notes. *Id.* Since a common pleas court is a "state agency" and, therefore, a "public office" as contemplated by R.C. 149.011(A), stenographic notes taken by the court's reporter serve to document the "decisions...operations or other activities" of the court and such notes are "records" of the court under R.C. 149.011. Records received by, created by or coming under the jurisdiction of a public office belong to that public office. R.C. 149.351 ("[a]ll records are the property of the public office concerned"); 1983 Op. Att'y Gen. No. 83-003. *Cf. State ex rel. Patterson v. Ayers*, 171 Ohio St. 369, 371, 171 N.E.2d 508, 509 (1960) ("[t]he rule in Ohio is that public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people").

The status of stenographic notes taken by a court reporter was briefly discussed in 1946 Op. No. 1143. The question of who has a right to obtain a transcript of stenographic notes taken by a court reporter focused on the ownership

of the records. While not stating precisely to whom the notes or transcripts belong, 1946 Op. No. 1143 treats such records as belonging to the court.² The court reporter's status as an employee and officer of the court receiving compensation from county funds was an important factor that led to that conclusion. Other important considerations included the reporter's duty to take notes arising from the judge's direction and the provisions of G.C. 1548 (the predecessor of R.C. 2301.20) that "[the] notes shall be filed in the office of the official shorthand reporter and carefully preserved." Based on analysis using the same factors applied in 1946 Op. No. 1143, and the express terms of R.C. 149.351, I conclude that a court reporter's stenographic notes are records of the court and are not the property of the court reporter. As such, they belong to the court of common pleas.³ Using the same rationale to determine the status of a transcript prepared by a court reporter from notes taken at a judicial proceeding, I conclude that such a transcript is also the property of the court.

Your second question asks whether reporter's notes are a public record. As determined in the discussion above of the status of court reporters' notes and transcripts, such notes and transcripts are records of a public office, namely, the court of common pleas. Records of a public office are "public records" if they are within the definition of R.C. 149.43(A)(1), which states in part:

any record that is kept by any public office, including but not limited to, state, county, city, village, township, and school district units, except medical records, records pertaining to adoption, probation, and parole proceedings, records pertaining to action under section 2151.85 of the Revised Code and to appeals of actions arising under that section, records listed in division (A) of section 3107.42 of the Revised Code, trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law.

The mandate of 149.43(A) that any record kept by a public office is a public record, does not extend to the records specified as excepted in 149.43(A).⁴ No general exception, however, exists therein for court records. Op. 74-097 at 2-391 ("those records which a court...[keeps] are, with the exceptions noted in R.C. 149.43, public records"). See also *State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St. 3d 170,

² I note that 1946 Op. Att'y Gen. No. 1143, p. 598 at 601, states: "as I have herein above indicated the stenographic notes taken by the official shorthand reporter do, in my opinion, become a part of the public records of his office." The discussion preceding that statement concludes that the office of court reporter is held only as an officer of the court. The discussion also specifically states that the notes are to be filed and carefully preserved in the court reporter's office, seemingly referring to the physical office space occupied by the reporter. 1946 Op. No. 1143, read as a whole, does not support a contention that a court reporter's stenographic notes are the property of the court reporter separate from the ownership of the court of common pleas.

³ I note that R.C. 2301.26 authorizes the appointment of shorthand reporters as referees to take and report evidence in cases pending "in any of the courts of this state." R.C. 2301.26 also states that "[s]uch notes shall be the property of the county." Since R.C. 2301.26 designates the status of stenographic notes taken by court of common pleas shorthand reporters acting as referees, and does not designate the stenographic notes taken pursuant to R.C. 2301.20, R.C. 2301.26 applies only to reporter's notes taken as a referee. See *Kroger v. Bowers*, 3 Ohio St. 2d 76, 209 N.E.2d 209 (1965) (*expressio unius est exclusio alterius*, the naming of a specific class implies the exclusion of those not named).

⁴ For example, records pertaining to adoption, probation and parole proceedings and records of the release of which is prohibited by state or federal law are not public records.

527 N.E.2d 1230 (1988). Any document recording the proceedings of a court is a public record within the meaning of R.C. 149.43. *State ex rel. Mothers Against Drunk Drivers v. Gosser*, 20 Ohio St. 3d 30, 485 N.E.2d 706 (1985). Moreover, previous opinions of the Attorney General have treated stenographic notes of a court reporter and transcripts of such notes as public records. 1946 Op. No. 1143 (stenographic notes); 1967 Op. Att'y Gen. No. 67-018 (transcripts). Therefore, I conclude that stenographic notes taken by a court reporter are public records as are transcripts prepared by a court reporter, unless the notes or transcripts include or comprise a record which is exempted from the definition of "public record" in R.C. 149.43(A)(1).

Your third and fourth questions are closely interrelated and focus on the language of R.C. 149.43(B) which allows the copying of public records. Your request asks that I also discuss who is "a person responsible for public records" under R.C. 149.43(B). R.C. 149.43(B) states, in relevant part: "Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time." (Emphasis added). While no definition section applicable to R.C. 149.43 defines "person responsible for public records" in a public office, the term has been previously construed to include a particular official where that official has a duty imposed by law to oversee a class of public records kept by that particular agency. *Schweikert; Mothers Against Drunk Drivers*. In addition to particular officials, the governmental unit which keeps the record is responsible for making the copies available. R.C. 149.43(C); *Barton v. Shupe*, 37 Ohio St. 3d 308, 525 N.E.2d 812 (1988). The term "a person responsible" has been read broadly. See, generally *State ex rel. Fostoria Daily Review Co. v. Fostoria Hospital Association*, 40 Ohio St. 3d 10, 531 N.E.2d 313 (1988) (A private person or entity holding public records of a public office as custodian is subject to an order of mandamus to release public records). Similarly, inasmuch as the clerk of the court of common pleas has a duty under R.C. 2303.09 to carefully preserve all papers delivered to him, such duty imposed by law makes the clerk a person responsible for public records pursuant to R.C. 149.43(B). Similarly, inasmuch as an official shorthand reporter of the court of common pleas and an assistant shorthand reporter have the duties to carefully preserve shorthand notes taken under R.C. 2303.20 and to furnish transcripts under R.C. 2303.23,⁵ such duty imposed by law makes the official shorthand reporter of the court of common pleas and an assistant shorthand reporter persons responsible for public records pursuant to R.C. 149.43(B). Pursuant to the dictate of R.C. 149.43(B), as a person responsible for public records, the official shorthand reporter of the court of common pleas, an assistant shorthand reporter or the clerk of the court of common pleas, if in possession of a copy of a transcript requested by any person, must make available a copy of such transcript at cost.

R.C. 149.43 does not define "at cost". A reasonable policy setting forth copy costs would be within the sound discretion of the public office. See *Jewett v. Valley Railway Co.*, 34 Ohio St. 601, 608 (1878) ("[w]here authority is given to do a specified thing, but the precise mode of performing it is not described, the presumption is that the legislature intended the party might perform it in a reasonable manner"). Where, however, a statute establishes a fee to be charged for copies provided, the statutory fee will control. Here, under R.C. 2301.24, the judges of the court of common pleas are required to fix the fee for copies of transcripts obtained from the court reporter. If the transcript is filed with the court, the clerk of the court of common pleas is required to charge one dollar per page for certified copies of the transcript. R.C. 2303.20(G). For copies which are not certified, the clerk of the court of common pleas may adopt a policy which sets a reasonable fee for copies. Such policy is subject to the direction of the court. R.C. 2303.26 (clerk of the court of common pleas shall perform common law and statutory duties under the direction of the court); R.C. 2301.04 (judges of the court of common pleas shall prescribe rules regulating matters as are necessary for the advancement of justice and for the government of the officers of the court); see also Ohio R. C.P. Superintendence 9 (authorizes local court rules). A reasonable rule setting forth the

⁵ See 1967 Op. Att'y Gen. No. 67-018 (only the court, a party to the action, or a party's attorney may require a court reporter to transcribe shorthand notes at a court proceeding, but a court reporter may prepare transcripts on request of a disinterested party).

fees for receiving a copy of a public record should reflect the actual costs involved in making a copy, unless the cost is otherwise set by law. *See* R.C. 149.43(B). R.C. 2301.24 directs the judges of the court of common pleas to fix the cost of making copies of transcripts by the court reporter. In summary, the cost of a certified copy obtained from the clerk of courts is set by R.C. 2303.20(G). Since no fee is statutorily set for the other public records discussed in this opinion, the public office responsible for those public records may adopt a reasonable policy setting a fee for copies which reflects the actual costs involved in making a copy.

Therefore, it is my opinion and you are hereby advised that:

1. Shorthand notes taken pursuant to R.C. 2301.20 and transcripts prepared pursuant to R.C. 2301.23 by an official shorthand reporter or an assistant shorthand reporter of the court of common pleas are the property of the court of common pleas.
2. Shorthand notes taken pursuant to R.C. 2301.20 and transcripts prepared pursuant to R.C. 2301.23 are public records under R.C. 149.43, unless the notes or transcripts include or comprise a record which is exempted from the definition of "public record" in R.C. 149.43(A)(1).
3. Under R.C. 149.43(B), a person seeking to inspect or receive a copy of the shorthand notes taken pursuant to R.C. 2301.20 by an official shorthand reporter or assistant shorthand reporter of the court of common pleas may direct the request to inspect or receive a copy to the official shorthand reporter of the court of common pleas.
4. Under R.C. 149.43(B), a person seeking to inspect or receive a copy of the transcript prepared pursuant to R.C. 2301.23 by a shorthand reporter or assistant shorthand reporter of the court of common pleas may direct the request to inspect or receive copies to the official shorthand reporter of the court of common pleas. If a transcript is filed with the court of common pleas, any person seeking to inspect or receive a copy of the transcript may direct the request to inspect or receive a copy to the clerk of the court of common pleas.
5. Under R.C. 149.43(B) public records must be made available "at cost" to any person who requests a copy. A public office, in its sound discretion, may adopt a reasonable policy setting a fee for copies obtained from the public office. The fee should reflect the actual costs involved in making a copy, unless the cost is otherwise set by statute.
6. Under R.C. 2301.24, the judges of the court of common pleas shall fix the fee for copies of transcripts obtained from the official shorthand reporter and the assistant shorthand reporter of the court of common pleas.
7. Under R.C. 2303.20(G), a clerk of the court of common pleas shall charge a fee of one dollar per page for copies with certificate and seal of a transcript filed with the clerk. For copies not including certificate and seal, the clerk of the court of common pleas, may, under the direction of the court of common pleas, pursuant to R.C. 2303.26 and R.C. 2301.04, adopt a reasonable policy setting fees that reflect the actual costs involved in making a copy.