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OPINION	:	No. 01-605
	:	
of	:	November 1, 2002
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THE HONORABLE BYRON SHER, MEMBER OF THE STATE SENATE,
has requested an opinion on the following question:

Does a county board of supervisors have statutory authority to charge a fee for a copy of a public record that exceeds the fee amount authorized by the California Public Records Act?

CONCLUSION

A county board of supervisors has statutory authority to charge a fee for a copy of a public record that exceeds the fee amount authorized by the California Public Records Act provided that the fee set by the county does not exceed the amount reasonably necessary to recover the cost to the county of providing the copy. In granting such statutory authority, the Legislature has specified exceptions for fees charged in furnishing copies of certain public records.

ANALYSIS

The question presented for resolution concerns the relationship between two different statutes contained in the Government Code.¹ Section 6253 is part of the California Public Records Act (§§ 6250-6276.48; “Act”) and authorizes state and local public agencies to charge a fee when furnishing a copy of a public record. Subdivision (b) of section 6253 states:

“Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.”

Accordingly, under the terms of section 6253, a public agency may charge a fee for a copy of a public record in an amount that is either (1) based upon and limited to the “direct costs of duplication” or (2) authorized and determined under some other statute. (*North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 147-148.)²

The second statute in question is section 54985. It is part of a statutory scheme (§§ 54985-54988) that authorizes counties to increase certain fees under specified conditions. Section 54985 provides:

“(a) Notwithstanding any other provision of law that prescribes an amount or otherwise limits the amount of a fee or charge that may be levied by a county, a county service area, or a county waterworks district governed by a county board of supervisors, a county board of supervisors shall have the authority to increase or decrease the fee or charge, that is otherwise authorized to be levied by another provision of law, in the amount reasonably necessary to recover the cost of providing any product or service or the cost of enforcing any regulation for which the fee or charge is levied. The fee or charge may reflect the average cost of providing any product or service or enforcing any regulation. Indirect costs that may be reflected in the cost of providing any

¹ All further statutory references are to the Government Code unless otherwise indicated.

² The “statutory fee” provision need not specify an exact amount of the fee but may simply authorize the charging of a fee in an amount to be determined by the public agency. Such a statute might specify the factors to be considered in the public agency’s calculation of the fee. (*Shippen v. Department of Motor Vehicles* (1984) 161 Cal.App.3d 1119, 1124-1127; 76 Ops.Cal.Atty.Gen. 249, 250-251 (1993).)

product or service or the cost of enforcing any regulation shall be limited to those items that are included in the federal Office of Management and Budget Circular A-87 on January 1, 1984.

“(b) If any person disputes whether a fee or charge levied pursuant to subdivision (a) is reasonable, the board of supervisors may request the county auditor to conduct a study and to determine whether the fee or charge is reasonable.

“

“(c) This chapter shall not apply to any of the following:

“(1) Any fee charged or collected by a court clerk pursuant to Section 26820.4, 26823, 26824, 26826, 26827, 26827.4, 26830, 72054, 72055, 72056, 72059, 72060, or 72061 of the Government Code or Section 103470 of the Health and Safety Code, and any other fee or charge that may be assessed, charged, collected, or levied, pursuant to law for filing judicial documents or for other judicial functions.

“(2) Any fees charged or collected pursuant to [Sections 6100-6110].

“(3) Any standby or availability assessment or charge.

“(4) Any fee charged or collected by a county agricultural commissioner.

“(5) Any fee charged or collected pursuant to [Sections 12240-12246] of the Business and Professions Code.

“(6) Any fee charged or collected by a county recorder or local registrar for filing, recording, or indexing any document, performing any service, issuing any certificate, or providing a copy of any document pursuant to Section 2103 of the Code of Civil Procedure, Section 27361, 27361.1, 27361.2, 27361.3, 27361.4, 27361.8, 27364, 27365, or 27366 of the Government Code, Section 103625 of the Health and Safety Code, or Section 9525 of the Uniform Commercial Code.

“(7) Any fee charged or collected pursuant to [Sections 26720-26751]

of the Government Code.”

The issue to be addressed is whether under the terms of section 54985, a county board of supervisors may charge a fee for a copy of a public record that exceeds the fee amount authorized in section 6253. We conclude that the authorization of section 54985 is applicable to most fees for copies of public records.

First, we note that section 6253 applies not only to counties but also to state agencies, cities, school districts and other public entities. (§ 6253, subd. (b).) It does not appear, however, that subdivision (a) of section 54985 requires the “other provision of law,” such as section 6253, to apply *only* to counties. As long as the other law “prescribes an amount or otherwise limits the amount of a fee or charge that may be levied by a county,” the terms of section 54985 would be applicable regardless of whether some other public agency may also be limited in charging the fee in question.³

Next, we consider whether section 6253 authorizes a “fee or charge” for purposes of section 54985. Section 6253 does not specify a particular amount to be paid for a copy of a public record. Moreover, its reference to “a statutory fee” suggests that some other provision of law may be followed without the need for reliance upon the terms of section 6253.

Nonetheless, section 6253 clearly prescribes the collecting of a fee for furnishing a copy of a public record. Even without considering the “statutory fee” alternative, section 6253 allows charging a fee based upon the “direct costs of duplication.” While the amount of the fee is thus limited in this alternative and must be administratively determined, the fee for the copy “is otherwise authorized to be levied by another provision of law” for purposes of section 54985, subdivision (a). (See *Shippen v. Department of Motor Vehicles*, *supra*, 161 Cal.App.3d at pp. 1124-1127; 76 Ops.Cal.Atty.Gen., *supra*, at pp. 250-251.)⁴

Next, we address whether the language of section 54985 may be applied to a copy of a public record. Is a copy a “product or service” as that phrase is used in subdivision

³ The exemptions listed in subdivision (c) of section 54985 also indicate that the statute’s terms would be applicable where the other provision of law limits the amount of a fee that would be charged by some other public agency.

⁴ Section 54985 does not grant independent authority to charge a fee in the first instance but only authorizes a county board of supervisors to increase (or decrease) a fee that is statutorily authorized elsewhere. (§ 54987.) Here, section 6253 provides the independent authorization for the county to levy the fee in question.

(a) of section 54985? Under section 6253, a person requesting a copy of a public record would expect to receive a tangible object that is a “product” which is produced by the performance of a “service.” (See *North County Parents Organization v. Department of Education*, *supra*, 23 Cal.App.4th at p. 147; 61 Ops.Cal.Atty.Gen. 458, 461-464 (1978); 28 Ops.Cal.Atty.Gen. 70, 71 (1956).) Such a product or service comes within the language of section 54985 since the statute itself exempts fees charged for copies of certain public records.

For example, the fee for a copy of a public record cannot be increased by a county board of supervisors under subdivision (a) of section 54985 if the copy is of a “writ, process, paper, order, or notice actually made by” the sheriff (§ 26727), “a birth, death, or marriage certificate, when the copy is made by the recorder” (§ 27365), or “of any other record or paper on file in the office of the recorder, when the copy is made by the recorder” (§ 27366) or “any notice of federal lien, or notice or certificate affecting a federal lien” (Code Civ. Proc., § 2103, subd. (d)). (See § 54985, subd. (c)(6), (c)(7); see also *County of Santa Barbara v. Connell* (1999) 72 Cal.App.4th 175, 180-182; 76 Ops.Cal.Atty.Gen., *supra*, at p. 252.) There would be no need to exclude fees charged for copies of these public records if fees for copies of public records were not subject to being increased under the general provisions of subdivision (a) of the statute. As stated by the Supreme Court in *Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063: “[W]e consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose. [Citation.]”

Subdivision (a) of section 54985 limits a county’s fee for a copy of a public record to “the amount reasonably necessary to recover the costs of providing” the copy.⁵ In charging a fee to cover its costs, a county board of supervisors could conceivably benefit those being charged since “[a]n inability to charge fees in a sufficient amount to cover costs would likely produce inadequate staffing” (76 Ops.Cal.Atty.Gen., *supra*, at p. 253, fn. 5.) In any event, a “reasonably necessary” fee for a copy of a public record would have no effect upon the public’s right of access to and inspection of public records free of charge.⁶

⁵ Subdivision (b) of section 54985 allows “the county auditor to conduct a study and to determine whether the fee or charge is reasonable” if the reasonableness of a fee increased by the county board of supervisors is disputed. (See 76 Ops.Cal.Atty.Gen., *supra*, at p. 252, fn. 4.)

⁶ The courts have noted that requests for copies of public records are often *not* “for the purpose of staying informed about the conduct of the people’s business, as the Act states (§ 6250),” but rather the copies are obtained for commercial purposes in selling information to others. (See *Shippen v. Department of Motor Vehicles*, *supra*, 161 Cal.App.3d at p. 1126.)

Finally, as between the provisions of section 6253 and section 54985, those of the latter control those of the former. Subdivision (a) of 54985 begins: “Notwithstanding any other provision of law” Section 6253 is such a “provision of law” that limits the amount a county may charge for a copy of a public record. The “notwithstanding” phrase contained in section 54985 constitutes a “term of art [that] has been read as an express legislative intent to have the specific statute control despite the existence of other law which might otherwise govern. [Citations.]” (*People v. DeLaCruz* (1993) 20 Cal.App.4th 955, 963.)

We conclude that a county board of supervisors has statutory authority to charge a fee for a copy of a public record that exceeds the fee amount authorized by the Act provided that the fee set by the county does not exceed the amount reasonably necessary to recover the cost to the county of providing the copy. In granting such statutory authority, the Legislature has specified exceptions for fees charged in furnishing copies of certain public records.
