

Company wins fight for public records

State wanted \$225K for tax maps, but lost the lawsuit

BY ERIC BOWEN

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A local company recently won a court battle to force the West Virginia State Tax Department to give the company low-cost access to state tax maps in digital format.

Even before the case was decided, however, county assessors were trying to change state law to maintain the income from paper records now in electronic form.

Last year Clarksburg-based Seneca Technologies asked the Tax Department for digital copies of all of the state's tax maps, company President Will White said. Seneca wanted to use the information to offer enhanced maps and assessment information to its customers in the real estate, oil and gas industries.

Tax maps are public documents available to view and copy in any county assessor's office. So Seneca filed the request under the state Freedom of Information Act to get all of the maps available.

The Tax Department responded that Seneca could have all the tax maps it wanted. But the agency wanted to charge Seneca the going rate for paper records, which is \$8 for every map. The total bill: more than \$225,000.

Seneca sued the agency, saying that the cost was far more than what is allowed under the state Freedom of Information Act. FOIA law says that public bodies can establish fees "reasonably calculated to reimburse it for its actual cost in making reproductions of such records."

In September, the Circuit Court of Kanawha County agreed with Seneca, according to documents provided by White. The court decided that electronic records and paper records are different, and that laws which govern how much agencies can charge for paper records don't apply to electronic records.

PUBLIC'S RIGHT TO KNOW

After the decision, Seneca paid \$18.53 for a disk with all of the maps, the Tax Department's actual cost in providing the records. The company spent more than \$18,000 in legal fees to obtain the records.

"They tried everything they could to weasel out of this," White said. "We want as many people as possible to know about the court decision and be ready if and when the assessors file legislation to charge for electronic copies of their maps."

Wade Thompson, director of the Tax Department's property tax division, said his agency argued that the digital versions shouldn't be treated differently from paper records.

State rules had established the rate for copies of tax maps, and the Tax Department should be able to charge the same rate for electronic versions of the maps, Thompson said. But because the law didn't specifically address electronic records, the court decided that Seneca should get the maps at the agency's cost.

"They're still tax maps," Thompson said. "Rather than being in a paper medium, they are in an electronic medium."

Even before Seneca's case, the Association of West Virginia Assessors had drafted an update to the tax law that would apply any fees set for paper records to electronic records, Marion County Assessor Jim Priester said.

Priester said he was on the committee that drafted the legislation. The organization hopes to get it passed in the next session of the state Legislature.

Priester said counties need to be able to charge for electronic files because the fees for copies of the tax maps go toward maintaining and updating the records in the assessor's office.

Each map sold by his office costs \$8, of which \$5 goes to the county and \$3 goes toward a state fund to upgrade courthouses. The sale of tax maps brings in between \$2,000 and \$3,000 a year for Marion County, Priester said.

Some of the requests for tax maps are from outside the county, Priester said. And some companies requesting documents, like Seneca, plan to use them to make a profit from taxpayer-financed information.

"Ultimately, the taxpayers are paying the contract to do the maps and you're just handing over these files to the companies at no cost," Priester said. "If you want to improve them and make them more accurate, it costs quite a bit of money."

Though he agrees with Priester that county assessors need to have control over who copies tax maps, Monongalia County Assessor Rodney Pyles said electronic maps should be available for free.

Monongalia County was the first assessor's office in the state to offer free electronic maps on the Internet and has done so for about 10 years.

Pyles said that having the maps on the Internet hasn't cut the revenue for paper records. Map sales still bring in about \$1,700 a year. But it has cut staffing costs, because people can find the maps easily online rather than in person at the assessor's office.

"They are public documents," Pyles said. "I think it's our job to do something for people and to make them available if we can."

Phil Reale, a Charleston lawyer who is an expert in public-records law, said Seneca's case could have a wide effect.

Tax maps aren't the only records that have specific charges established in state law. Counties charge fees for property deeds, court records and other documents, often at a cost of more than \$1 per page.

Reale said that in an age of the Internet and electronic communication, counties have to change how they do business. He said electronic files are cheaper to produce and should cost less for the public.

"What I think is a good idea is to follow the idea of FOIA and charge the taxpayer or public the reasonable cost of reproducing whatever it is," Reale said. "If it's cheaper to do it electronically, so be it."