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Outgoing Legal Mail

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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A prisoner's right to send "legal mail" is subject to prison regulations and practices that "further an important or substantial governmental interest unrelated to the suppression of expression," and that extend no further "than is necessary or essential to the protection of the particular governmental interest involved." *Bell-Bey v. Williams*, 87 F.3d 832, 838 (6th Cir. 1996) citing *Procunier v. Martinez*, 416 U.S. 396, 413, 94 S.Ct. 1800, 1811, 40 L.Ed.2d 224 (1974) and *Martucci v. Johnson*, 944 F.2d 291, 295-96 (6th Cir. 1991). In *Bell-Bey*, the Sixth Circuit rejected an inmate's challenge to a prison mail policy, which required prison officials to "inspect" outgoing legal mail to determine whether the mail was in fact legal mail. The court upheld the policy, noting that there was no proof that the policy directed officials to read prisoners' legal mail. *Id.* at 839. In addition, the court noted that there were procedural safeguards that limited the prison official's inspection of a prisoner's legal mail. Under the policy at issue, "1) the official's inspection [wa]s limited to scanning legal mail for docket numbers, case title, requests for documents, et cetera; 2) the inspection [wa]s conducted in the prisoner's presence in his cell; and 3) the prisoner [could] seal his mail after the inspection [wa]s completed." *Id.* at 837.

While it is clear that an indigent inmate has no constitutional right to free postage for nonlegal mail, *Argue v. Hofmeyer*, 80 Fed.Appx. 427, 429 (6th Cir. 2003) (citations omitted), "[i]t is indisputable that indigent inmates must be provided at State expense with paper and pen to draft legal documents with notarial services to authenticate them, and with stamps to mail them." *Bounds v. Smith*, 430 U.S. 817, 824-825, 97 S.Ct. 1491, 1496, 52 L.Ed.2d 72 (1977). "*Bounds*, however, does not require that inmates be provided with unlimited free postage." *Blaise v. Fenn*, 48 F.3d 337, 339 (8th Cir. 1995) citing *Smith v. Erickson*, 884 F.2d 1108, 1111 (8th Cir. 1989); accord *Chandler v. Coughlin*, 763 F.2d 110, 114 (2d Cir. 1985). See also *Myers v. Hundley*, 101 F.3d 542, 544 (8th Cir. 1996) (Inmates do not have a right to unlimited stamp allowances for legal mail.); *Hershberger v. Scaletta*, 33 F.3d 955, 956 (8th Cir. 1994) (holding that inmates who were not permitted to work for money nor provided with any allowance or other form of income must be provided with one first-class stamp per week for legal mail); *Gaines v. Lane*, 790 F.2d 1299, 1308 (7th Cir. 1986) ("However, although prisoners have a right of access to the courts, they do not have a right to unlimited free postage."); *Hoppins v. Wallace*, 751 F.2d 1161, 1162 (11th Cir.1985) ("The constitutional right to access to the courts entitles indigent prisoners to some free stamps as noted in *Bounds* but not unlimited free postage as is urged by the plaintiff.").

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