November 29, 1994

OPINION NO. 94-077

The Honorable R. Alan Corbin
Brown County Prosecuting Attorney
200 East Cherry Street
Georgetown, Ohio 45121

Dear Prosecutor Corbin:

You have requested an opinion as to whether the portion of R.C. 1777.02 concerning endorsement by the county recorder of an instrument conveying real property to or from certain partnerships applies to instruments conveying real property to or from a limited partnership.

Certificate of Limited Partnership

The General Assembly recently enacted Sub. S.B. 74, 120th Gen. A. (1994) (eff. July 1, 1994) in which it amended numerous statutes governing business organizations, including limited partnerships. Prior to the effective date of Sub. S.B. 74, in order to form a limited partnership, R.C. 1782.08(A) required the filing of a certificate of limited partnership in the office of the county recorder of the county in which the limited partnership had its principal place of business. *See generally* R.C. 1777.05 (requiring county recorder to keep register of firms and persons mentioned in partnership certificates filed in his office). Sub. S.B. 74 amended R.C. 1782.08(A) to require such certificate to be filed with the Secretary of State, in accordance with R.C. 1782.13.[1]

Sub. S.B. 74 also provides for the filing with the Secretary of State of a certificate of limited partnership of a limited partnership that was in existence on July 1, 1994. In order to consolidate the filing of all certificates of limited partnership in the office of the Secretary of State, the General Assembly has enacted R.C. 1782.63, which requires the filing of a certificate of limited partnership or an application for registration as a foreign limited partnership with the Secretary of State by all limited partnerships existing or registered prior to July 1, 1994. R.C. 1782.63 states in pertinent part:

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[1] R.C. 1782.13 concerns the filing of certificates of limited partnership and related documents with the Secretary of State.

> (A)(1) Each limited partnership existing prior to the effective date of this section, and each foreign limited partnership registered pursuant to [R.C. 1782.49 and .50] prior to that date shall file a certificate of limited partnership and an application for registration as a foreign limited partnership, respectively, with the secretary of state as follows:
> (a) Each limited partnership with a name beginning with the letter A, B, C, D, E, or F shall so file with the secretary of state on or before June 30, 1995;
> (b) Each limited partnership with a name beginning with the letter G, H, I, J, K, L, or M shall so file with the secretary of state on or before December 31, 1995;
> (c) Each limited partnership with a name beginning with the letter N, O, P, Q, R, or S shall so file with the secretary of state on or before June 30, 1996;
> (d) Each limited partnership with a name beginning with the letter T, U, V, W, X, Y, or Z shall so file with the secretary of state on or before December 31, 1996.

It may not be until as late as December 31, 1996, therefore, that every limited partnership that was in existence on July 1, 1994, will have on file with the Secretary of State a certificate of limited partnership.

Conveyance of Property to or from Limited Partnership

One concern appears to be with the obligations of the county auditor and county recorder under R.C. 1777.02, as amended by Sub. S.B. 74. R.C. 1777.02 now states in pertinent part:

> *Except as provided in this section*, every partnership transacting business in this state under a fictitious name, or under a designation not showing the names of the persons interested as partners in the partnership, shall file for record, with the county recorder of the county in which its principal office or place of business is situated and of each county in which it owns real property, a certificate to be recorded and indexed by the recorder, stating the names in full of all the members of the partnership and their places of residence. The county auditor shall not transfer, and the county recorder shall not record, any conveyance of real property to or from *any such partnership*, unless the instrument is endorsed by the county recorder, showing that the partnership has filed and the county recorder has recorded the *certificate required by this section....*
> The certificate shall be signed by the partners and acknowledged by some officer authorized to take acknowledgements of deeds, ... except that a domestic or foreign *limited partnership that is formed under or registered pursuant to [R.C. Chapter 1782] need not file a certificate pursuant to this section*. (Emphasis added.)

R.C. 1777.02 thus requires, with certain exceptions, that every partnership doing business in the state under a name that does not disclose all the partners' names file with the appropriate county recorder a certificate showing the names and addresses of all the partners. R.C. 1777.02 excepts from this

filing requirement a limited partnership formed under, *or* registered pursuant to, R.C. Chapter 1782.[2]

A question has been raised concerning the application to a conveyance of real property to or from a limited partnership of that portion of R.C. 1777.02 that prohibits the county auditor from transferring property and the county recorder from recording a conveyance of property to or from "any such partnership" without the endorsement of the county recorder, showing that the partnership has filed and the recorder has recorded "the certificate required by this section." The use of the phrase "such partnership" clearly refers to a partnership that is required by R.C. 1777.02 to file a certificate of partnership with the appropriate county recorder. As of July 1, 1994, however, R.C. 1777.02 no longer requires a limited partnership formed or registered under R.C. Chapter 1782 to file a certificate under that section. Thus, a certificate of limited partnership is no longer a "certificate required by this section," for purposes of R.C. 1777.02. Accordingly, the prohibition in R.C. 1777.02 against the county auditor's transfer of property or the county recorder's recording of a conveyance of real property to or from a partnership without the endorsement of the recorder "showing that the partnership has filed and the county recorder has recorded the *certificate required by this section*," has no application to an instrument conveying property to or from a limited partnership formed or registered under R.C. Chapter 1782.[3]

An additional concern raised by the recent amendments to the statutes governing certificates of limited partnership is that prior to July 1, 1994, former R.C. 1782.08 (1989-1990 Ohio Laws, Part III, 5228 (Am. Sub. H.B. 441, eff. July 18, 1990)) required a limited partnership to file a certificate of limited partnership in the office of the county recorder. Even after July 1, 1994, the county recorder will, therefore, have such previously filed certificates on record in his office. Further,

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[2] Also amended by Sub. S.B. 74, 120th Gen. A. (1994) (eff. July 1, 1994) is R.C. 1782.15, which states:

> The fact that a certificate of limited partnership is on file in the office of a county recorder or with the secretary of state is notice that the partnership is a limited partnership and that the persons designated in the certificate as general partners are general partners. It is not notice of any other fact. Any certificate filed with the secretary of state on or after January 1, 1995, shall supersede all certificates filed in the office of a county recorder pursuant to this chapter or pursuant to the law governing limited partnerships that was in effect prior to April 4, 1985, with respect to such partnership.

[3] Pursuant to R.C. 1782.02, "[t]he name of any limited partnership, as set forth in its certificate of limited partnership, *shall* include _Limited Partnership,_ _L.P.,_ _Limited,_ or _Ltd._" (Emphasis added.) Prior to its amendment in Sub. S.B. 74, R.C. 1782.02 required the name of any limited partnership to contain the words "limited partnership." 1983-1984 Ohio Laws, Part II, 4169, 4179 (Am. Sub. H.B. 607, eff. April 4, 1985). It will, therefore, be apparent from the names contained in the instrument of conveyance whether a partnership is a limited partnership for which the county recorder need not provide an endorsement under R.C. 1777.02.

pursuant to R.C. 1782.63, a certificate of limited partnership for a limited partnership that was formed prior to July 1, 1994, may not be on file with the Secretary of State until as late as December 31, 1996. As of July 1, 1994, however, R.C. 1777.02 no longer requires endorsement by the county recorder of an instrument conveying real property to or from a limited partnership prior to the transfer of the property by the auditor or filing of the conveyance by the county recorder, whether or not a certificate of limited partnership has been filed with the county recorder or the Secretary of State.

Conclusion

In answer to your question, it is my opinion, and you are hereby advised that R.C. 1777.02, as amended by Sub. S.B. 74, 120th Gen. A. (1994) (eff. July 1, 1994), does not require a county recorder to endorse a conveyance of real property to or from a limited partnership that is formed or registered under R.C. Chapter 1782 prior to the transfer of the property by the county auditor and recording of the conveyance by the county recorder.

Respectfully,

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Attorney General

November 29, 1994

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SYLLABUS: 94-077

R.C. 1777.02, as amended by Sub. S.B. 74, 120th Gen. A. (1994) (eff. July 1, 1994), does not require a county recorder to endorse a conveyance of real property to or from a limited partnership that is formed or registered under R.C. Chapter 1782 prior to the transfer of the property by the county auditor and recording of the conveyance by the county recorder.