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FEE—COUNTY RECORDER ENTITLED TO RECEIVE FEE OF TWENTY-FIVE CENTS TO ATTACH TO ANY FILED INSTRUMENT AFTER THE FILING THEREOF, ANY SWORN STATEMENT, CREDIT, ASSIGNMENT, OR ANY OTHER DOCUMENT—RECORDER—ENTITLED TO RECEIVE FEE OF TWENTY-FIVE CENTS TO ATTACH TO FILED CHATTEL MORTGAGE, AFTER FILING THEREOF, A PARTIAL RELEASE OF CHATTEL MORTGAGE—SECTION 8572 G. C.

SYLLABUS:

Under the provisions of Section 8572, General Code, providing for a fee of twenty-five cents to be paid to the county recorder "for attaching to any filed instrument after the filing thereof any sworn statement, credit, assignment or any other document," the county recorder is entitled to receive such fee of twenty-five cents for attaching to a filed chattel mortgage, after the filing thereof, a partial release of such chattel mortgage.

Columbus, Ohio, September 23, 1952

Hon. John C. Ferguson, Prosecuting Attorney
Perry County, New Lexington, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"Would you kindly advise me in behalf of our County Recorder as to whether he is required to charge the sum of twenty-five (\$.25) cents for each partial release on a chattel mortgage which had been previously filed in his office.

"It is provided under Section 8572 of the General Code of Ohio which became effective September 7, 1951, that * * * 'for attaching to any filed instrument after the filing thereof any sworn statement, credit, assignment or any other document, twenty-five (\$.25) cents' * * *

"It seems to me that partial release of a chattel mortgage would be considered a 'credit' and the County Recorder would be compelled to charge the sum of twenty-five cents for each partial release that is filed with the original mortgage, and upon its cancellation he then would charge the sum of twenty-cents.

"I do not find any late interpretations of this new section so I find it necessary to submit the question. If you have already ruled on the matter it has not come to my attention."

As noted in your letter, your question involves a consideration of that language of Section 8572, General Code, providing for the payment of fees to the county recorder, which reads:

“* * * for attaching to any filed instrument after the filing thereof any sworn statement, credit, assignment or any other document, twenty-five (\$.25) cents * * *.”

It should be pointed out that this language was contained in Section 8572 prior to the amendment of said section, effective September 7, 1951. For a discussion of the effect of this amendment, which eliminated the separate fees previously provided of thirty cents for the filing and fifteen cents for the cancellation of a filed chattel mortgage and substituted a total fee of fifty cents for “filing and cancelling,” your attention is directed to Opinion No. 716, Opinions of the Attorney General for 1951, page 448. In such opinion I held that, as to chattel mortgages filed prior to September 1, 1951 and upon which the thirty cent filing fee had been paid, the county recorder is authorized to charge a fee of twenty cents for cancelling, thus obtaining a total charge of fifty cents for filing and recording. This undoubtedly is the twenty cents to which you make reference in the third paragraph of your letter.

Since the language under consideration was not changed by the 1951 amendment of Section 8572, it would appear that the same basic question would be presented, whether (a) the chattel mortgage was filed after September 7, 1951 and the fifty cent fee paid for “filing and cancelling,” or (b) the chattel mortgage was filed prior to September 7, 1951 and the thirty cent filing fee then in effect was the only fee that had been paid to date. In fact, it would appear that this same basic question would also have been presented in the case of a “partial release” executed and deposited with the county recorder before September 7, 1951.

As noted in your letter, the basic question involved in your request is whether a “partial release” of a chattel mortgage is a “credit” to be attached to the filed instrument for which a fee of twenty-five cents is authorized.

Since such “partial release” would not *terminate* the legal effectiveness of the chattel mortgage, I do not believe that such could be considered a *cancellation* of such mortgage.

In tracing the historical development of Section 8572, General Code, I find that prior to the amendment of such section by the passage of

House Bill No. 128 by the 96th General Assembly in 1945, there was no fee provided for the cancellation of a filed chattel mortgage. Prior to such amendment such had been specifically held by one of my predecessors in Opinion No. 6545, Opinions of the Attorney General for 1943, page 682. In this opinion, the then Attorney General considered the question of whether or not a cancellation was a "sworn statement, credit, assignment or any other document" for which the recorder was (and still is) specifically authorized to charge a fee of twenty-five cents "for attaching to any filed instrument." He concluded that a cancellation could not be considered as falling within the scope of this language because of the fact that when a sworn statement, credit or assignment is attached to a chattel mortgage, such mortgage still remains in existence and such attachment does not bring about a termination of the rights of the parties.

While the question now under consideration was not specifically considered by the then Attorney General, I believe it clear that the reasoning there adopted, with which I am in full agreement, would compel the conclusion that any sworn statement, credit, assignment or any other document deposited with the county recorder for the purpose of attaching to any chattel mortgage theretofore filed, which did not bring about a *termination* of the rights of the parties, would require the charge of twenty-five cents provided in Section 8572, General Code.

Applying this test to a "partial release," it would seem clear that, while the rights of the parties are modified, such rights are not terminated and the original chattel mortgage, as modified by such "partial release," still remains in force and effect.

I might add that it is my understanding that county recorders have long charged a fee of twenty-five cents for attaching such "partial release" to a filed chattel mortgage. This fact becomes important by reason of the holding of the Supreme Court in the case of *Industrial Commission v. Brown*, 92 Ohio St., 309, 311 that:

"Administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do. * * *"

In specific answer to your question, it is my opinion that under the provisions of Section 8572, General Code, providing for a fee of twenty-five cents to be paid to the county recorder "for attaching to any filed instrument after the filing thereof any sworn statement, credit, assignment

or any other document," the county recorder is entitled to receive such fee of twenty-five cents for attaching to a filed chattel mortgage, after the filing thereof, a partial release of such chattel mortgage.

Respectfully,

C. WILLIAM O'NEILL
Attorney General