

March 26, 2021

The Honorable Lindsey Angler
Guernsey County Prosecuting Attorney
627 Wheeling Avenue
Cambridge, Ohio 43725

SYLLABUS: 2021-004

Both a county recorder and a county auditor must accept valid deeds for recording or transfer that are presented to their respective offices by shipment through the United States Postal Service.



DAVE YOST

OHIO ATTORNEY GENERAL

Opinions Section
Office (614) 752-6417
Fax (614) 466-0013

30 East Broad Street, 25th Floor
Columbus, Ohio 43215
www.ohioattorneygeneral.gov

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OPINION NO. 2021-004

The Honorable Lindsey Angler
Guernsey County Prosecuting Attorney
627 Wheeling Avenue
Cambridge, Ohio 43725

Dear Prosecutor Angler:

Your predecessor requested an opinion regarding the ability of a county recorder and a county auditor to dictate the procedure by which deeds for recording or transfer are presented to their offices. I have framed your question as follows:

May a county recorder and a county auditor refuse to accept deeds for recording or transfer that are presented by shipment through the United States Postal Service?

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The answer to your question turns on the meaning of “presented,” a word that appears in two chapters of the Revised Code relevant to this opinion. The first chapter governs the duties of county recorders; the second governs the duties of county auditors. Some background on the offices and their responsibilities provides useful context.

“A county recorder is responsible for recording various instruments.” 2017 Op. Att’y Gen. No. 2017-010, Slip Op. at 1; 2-79; 1999 Op. Att’y Gen. No. 99-014, at 2-109. Relevant here, a county recorder must record “[d]eeds and other instruments of writing for the absolute and

unconditional sale or conveyance of land, tenements, and hereditaments[.]” R.C. 317.08(A)(1). When required or authorized by the Revised Code, and absent reasonable cause by a county recorder to believe that the instrument is materially false or fraudulent, a county recorder shall record the instrument in the official record in regular succession and in priority of presentation. *See* R.C. 317.13. But the duty to record absolute conveyance of land or any absolute conveyance of minerals or mineral rights arises only once a deed is “presented” to a county recorder. R.C. 317.22.

R.C. 319.20 specifies the relevant duties of a county auditor. That section provides that, after several intermediary steps, “the county auditor shall transfer any land or town lot or part thereof, minerals therein, or mineral rights thereto, charged with taxes on the tax list, from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition, devise, descent, or otherwise.” In addition, “[t]he auditor shall endorse on the deed or other evidences of title *presented* to the auditor that the proper transfer of the real estate described in the deed has been made in the auditor’s office or that it is not entered for taxation, and sign the auditor’s name to the deed.” *Id.* (Emphasis added); *see also* R.C. 317.22(B) (“[s]uch conveyance has been presented to the county auditor, and by the county auditor indorsed ‘transfer,’ or ‘transferred not necessary’”).

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As the foregoing shows, both county recorders and county auditors have statutory duties that are triggered by the “present[ation]” of a deed. A county recorder has a duty to record a deed once the deed for the absolute conveyance of land or any conveyance of mineral or mineral rights is “presented” to the recorder. R.C. 317.22 and 317.08(A)(1). And a county auditor has a duty to transfer any land or town lot or part thereof, minerals therein, or mineral rights

thereto, charged with taxes on the tax list to the new owner, and endorse that proper transfer of the real estate occurred or was not entered for taxation once the county auditor is “presented” with the deed. *See* R.C. 319.20 and 317.22(B). Your question asks if these officers can refuse to accept deeds presented by shipment through the United States Postal Service.

The answer is no, they cannot. Both county auditors and county recorders are creatures of statute; their duties are defined by statute, and they only have those powers which are either expressly granted or necessarily implied by statute. *See, e.g.*, 2016 Op. Att’y Gen. No. 2016-006, Slip Op. at 1; 2-61; 2017 Op. Att’y Gen. No. 2017-025, Slip Op. at 2; 2-253. As just explained, the statutes *require* county recorders and county auditors to undertake certain tasks upon being “presented” with a deed for recording or transfer. The Revised Code provides neither a particular method nor definition for “present”. *See* 2017 Op. Att’y Gen. No. 2017-010, Slip Op. at 3; 2-81. The word “present” thus retains its ordinary usage. *See* R.C. 1.42; *id.* And in ordinary parlance, the word “present” is defined “to mean ‘to hand over, give, or *send*...to someone.” 2017 Op. Att’y Gen. No. 2017-010, Slip Op. at 2; 2-81 (Emphasis added), quoting *Webster’s New World College Dictionary* 1152 (5th ed. 2014).

In sum, a deed is “presented” when the deed is handed over, given, or *sent* to a county recorder or county auditor. *See* 2017 Op. Att’y Gen. No. 2017-010, Slip Op. at 3; 2-82. Thus, a mailed deed is “presented” in the relevant sense. Because both a county recorder and county auditor are dutybound to act upon being “presented” with a deed, *see* R.C. 317.22 and 319.20, they lack any authority to refuse deeds presented by mail. As Chief Justice Marshall observed in a different context long ago, government officials have “no more right to decline the exercise” of a duty “which is given, than to usurp” power “which is not given.” *Cohens v. Virginia*, 19 U.S. 264, 404 (1821). So too here.

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

Both a county recorder and a county auditor must accept valid deeds for recording or transfer that are presented to their respective offices by shipment through the United States Postal Service.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

DAVE YOST
Ohio Attorney General