

allocate such approved budget among the various taxing subdivisions comprising such general health district for inclusion in their tax budgets along with other items comprising the item for current expenses filed with the budget commission on or before July 15th; then the county auditor, when making his semi-annual apportionment of funds shall retain a sum equal to one-half the amount so apportioned to a particular subdivision from the funds collected for the purposes of the general operating fund of such subdivision. If such is a reasonable construction of the language of such sections, it will permit each of such sections to remain effective, and comply with the rules of interpretation of statutes as hereinbefore set forth.

The language of Sections 1261-40, 5625-5 and 5625-20, General Code, when so construed, does not contemplate a levy of tax for the particular purpose of a general health district, but rather makes it a part of the levy of the subdivision for the general operating fund of the subdivision. The provision of Section 1261-40, General Code, is specific that one-half of the amount shall be deducted by the county auditor when making his semi-annual apportionment of taxes to taxing subdivisions. There is no language in such section which, without the addition of other language, could be interpreted as expressing a legislative intent to require the auditor to withhold a lesser amount than that provided, which lesser amount would depend upon the extent of tax delinquencies.

Specifically answering your inquiry it is my opinion that:

(1) Sections 1261-40, 5625-5 and 5625-20, General Code, are in *pari materia*, and must be construed together, in such manner as to give effect to the provisions of each.

(2) By virtue of the provisions of Sections 1261-40, 5625-5 and 5625-10, General Code, the county auditor, in making his semi-annual apportionment of funds collected by the county treasurer must retain from the sum to be apportioned to each township or village which is a part of a general health district, for its general operating fund, one-half of the amount of taxes for the maintenance and operation of such health district allocated to, and included in the tax levy of such taxing subdivision, even though the county treasurer has been unable to collect the entire amount of taxes levied by such subdivision for its general operating fund.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

1546.

COUNTY RECORDER—FILING OF ASSIGNMENT OF WAGES AND  
CHATTEL MORTGAGE—SINGLE FILING FEE CHARGED THERE-  
FOR—NO FEE FOR NOTING CANCELLATION OF CHATTEL MORT-  
GAGE.

*SYLLABUS:*

1. *When in the same indenture there is contained an assignment of wages as described in Sections 6346-1 et seq., General Code, and also a chattel mortgage, such document is but a single instrument within the meaning of the statutes of Ohio with reference to the filing of instruments with the county recorder, and a single filing fee should be charged therefor. However, it should be so indexed as to indicate that the instrument filed is a chattel mortgage and assignment of wages, and should be refiled each year in order to retain the priority of the wage assignment.*

2. *By reason of the provisions of Section 8563, General Code, the county recorder has no authority to demand or receive a fee for noting the cancellation and satisfaction of a chattel mortgage upon the margin of the record where it has been recorded pursuant to the provisions of such section.*

COLUMBUS, OHIO, September 13, 1933.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, enclosing letters from the county recorder of your county, in which the following questions are presented:

1. In the event that an instrument or document is presented for filing to the county recorder which, in terms, contains an assignment of wages within the meaning of section 6346-1, et seq., General Code, and also a mortgage on chattels, in what manner shall such instrument be filed in order to give effect to the provisions of section 6346-7, General Code, which requires such assignment of wages to be filed annually, and to give effect to the provisions of section 8565, General Code, which require a chattel mortgage to be refiled only every three years?

2. Is the county recorder authorized by law to make or receive any fee for entering a notation of cancellation of a chattel mortgage which has been recorded pursuant to the provisions of section 8563, General Code, on the margin of the record thereof?

Section 6346-7, General Code, in so far as it is material to your inquiry, reads:

“\* \* In order to obtain a priority of any such assignment over any other assignment, the holder thereof, shall deposit a true copy with the recorder of the county where the person making such assignment, if a resident of the state, resides, or if not a resident of the state, then with the recorder of the county where such assignment is made, together with a sworn statement by the holder, his agent, or attorney, of the amount due, and the rate of interest charged. All such assignments shall be filed and preserved by the recorder as provided in section 8562 of the General Code. When so deposited, any such assignment shall have priority over any other assignment subsequently deposited as herein provided.

Every such assignment so filed shall be void as against other assignments to creditors of the person making it after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of said period of one year a true copy thereof, together with a sworn statement by the holder thereof, his agent or attorney, of the amount then due and rate of interest charged is re-filed with the county recorder as herein provided.

A sworn copy of such assignment so filed together with a statement of the amount due filed with any employer of the assignor shall bind not exceeding fifty per cent of any salary, wages or earnings due or to become due such assignor from the time the same is filed with such employer until any such loan and interest is fully paid and discharged.”

Section 8562, General Code, referred to in such section, reads:

“The officer receiving such an instrument shall indorse thereon the time of receiving it and its consecutive number, and enter in a book to be provided by the county the names of all parties thereto, alphabeti-

cally arranged, with the number of the instrument, its date, the day of filing it, and the amount secured thereby, which entry must be repeated, alphabetically, under the name of every party thereto. He also shall deposit the instrument in his office to be there kept for the inspection of all persons interested. When such mortgage is refiled or cancelled the date of such refileing or cancellation must be entered upon the margin of such record opposite the original entry."

Such section is the provision of statute concerning the record of chattel mortgages.

Your inquiry apparently arises by reason of the fact that Section 6346-7, General Code, requires an instrument assigning wages to be refiled each year, while Section 8565, General Code, requires chattel mortgages to be refiled before the expiration of three years.

From the terms of your inquiry, I assume that the county recorder has in mind a situation in which the indenture tendered for filing is, in terms, not only an assignment of wages, but also a chattel mortgage. From an analysis of the sections above referred to, and related sections, it would appear that the legislature intended that chattel mortgage indentures and assignment of wage indentures should be filed for record in exactly the same manner and filed and indexed by the county recorder in exactly the same manner.

I am unable to find any provision of statute which would authorize the county recorder to refile a part of an instrument or indenture without at the same time refileing the other parts of the same indenture, even if it were physically possible to do so. It must be borne in mind that the filing of an instrument is not a recording, that is, in the filing of an instrument, as contemplated by Section 8562, General Code, it is not required that any part of the instrument shall be copied into the records.

The indenture of assignment of wages referred to in Sections 6346 to 6346-12, General Code, is in legal effect a mortgage, that is, it is a conveyance of property as security for the performance of an obligation, which, if performed, vitiates the assignment. The legislature has seen fit to place more obligations on such type of mortgagee in order to retain the priority of his mortgage than on other mortgage liens. I find no language in Section 6346-7, General Code, which would make the indenture of assignment of wages void, *as between the parties*, if it were not refiled annually. The only effect of such failure to refile is to lose priority of the lien.

Referring to Section 8572, General Code, the legislature in fixing the fees of the county recorder for the filing of papers, fixes the fee "for filing each instrument" not for "each lien." The word "instrument" is defined in Bouvier's Law Dictionary as "a document or writing which gives formal expression to a legal act or agreement, for the purpose of creating, securing, modifying, or terminating a right; a writing executed and delivered as evidence of an act or agreement."

It is, therefore, my opinion that where an assignment of wages for the payment of an obligation is contained in an indenture which also mortgages chattel property as security for the payment of the same obligation, such indenture is but a single instrument, although the provisions of section 8562, General Code, would indicate that it should be so indexed as to indicate to an examiner of the indices the exact nature of the instrument.

The mere fact that the instrument would only need to be refiled before a lapse of three years, if it had not contained an assignment of wages, could hardly

change its character from one instrument to two instruments even though the assignment of wages therein must be filed annually. The greatest effect of such inclusion would be to require the entire instrument to be refiled annually.

You further inquire as to the method of release of chattel mortgages recorded as provided in Section 8563, General Code, as distinguished from filing as provided in Section 8562, General Code. Section 8563, General Code, reads:

"If the party depositing the instrument desires to have it recorded, the officer must record it at the expense of the person making the request, in a book to be provided by the county. He also shall enter upon the margin of such record when the instrument is refiled any credit or statement placed thereon after it was recorded. When it has been satisfied, the party holding it forthwith shall notify the officer who made the record thereof, who without delay, must note such cancellation and satisfaction upon the margin of the record without charge therefor."

The wisdom of the laws is for the legislative branch of the government rather than the judicial or executive branch. I therefore express no opinion concerning the wisdom of the last sentence of such section. Since such section specifically states that the cancellation and satisfaction on the margin of the record shall be without cost, I am unable to conclude that the legislature, by virtue of the provisions of Section 8572, General Code, which authorizes the county recorder to receive a fee of twenty-five cents "for recording any affidavit, credit or statement added to any instrument between the time of filing and re-filing" intended by such language to authorize the collection of a fee for the services which in Section 8563, General Code, they stated to be gratis. It would be a strained construction to hold that a cancellation was added to an instrument between the time of filing and re-filing, when the legal effect of such entry would be to terminate the filing upon its delivery to the recorder.

You do not enclose a copy of the release slip to which you refer. I have therefore assumed that it is a slip similar to those used in many counties, purporting to authorize the recorder to cancel the instrument on the record. I am not herein passing upon the question of the recording of a "cancellation by separate instrument" similar to those authorized to be used for the cancellation of real estate mortgages, to which the reasoning herein does not apply.

Specifically answering your inquiry, it is my opinion that:

1. When in the same indenture there is contained an assignment of wages as described in Sections 6346-1 et seq., General Code, and also a chattel mortgage, such document is but a single instrument within the meaning of the statutes of Ohio with reference to the filing of instruments with the county recorder, and a single filing fee should be charged therefor. However, it should be so indexed as to indicate that the instrument filed is a chattel mortgage and assignment of wages, and should be refiled each year in order to retain the priority of the wage assignment.

2. By reason of the provisions of Section 8563, General Code, the county recorder has no authority to demand or receive a fee for noting the cancellation and satisfaction of a chattel mortgage upon the margin of the record where it has been recorded pursuant to the provisions of such section.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*