

310.

APPROVAL, NOTES OF THORNVILLE VILLAGE SCHOOL DISTRICT,
PERRY COUNTY, OHIO—\$3,844.00.

COLUMBUS, OHIO, March 22, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

311.

APPROVAL, NOTES OF SYLVANIA VILLAGE SCHOOL DISTRICT,
LUCAS COUNTY, OHIO—\$13,028.00.

COLUMBUS, OHIO, March 22, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

312.

EASEMENTS—RECORDED IN RECORD OF DEEDS—NO AUTHORITY
TO RECORD EASEMENTS IN A SEPARATE BOOK.

SYLLABUS:

1. *There is no statutory authority for the county recorder to keep a separate book for recording instruments creating easements.*

2. *Easements may be created by instruments in writing for the absolute and unconditional sale or conveyance of lands, tenements and hereditaments. Under Section 2757 of the General Code, it is the county recorder's duty to record such instruments in the record of deeds.*

COLUMBUS, OHIO, March 22, 1933.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—I have your letter of recent date which reads as follows:

“Our County Recorder has been keeping a volume of record designated as ‘Easement Record No. 1.’ The first entry therein being under date of August 2, 1929.

“The new Recorder advises me there has been some objection on the part of some of the attorneys here to the use of this volume as there is no provision in the General Code for keeping such record and therefore the record of instruments therein are of little or no value in giving notice to purchasers of the real estate through, or over which the easement, therein recorded, is granted.

“Section 2757, G. C., does not provide for a separate volume in which to keep a record of easements, so, as above stated, at the request of the Recorder of this county, I am asking your opinion as to the legality of keeping such separate and so designated volume.

"The volume referred to has a direct index, only, which has been kept up, and in addition to such index, the instrument recorded in this Easement Book in also indexed in the current Deed Index, referring therein to 'Easement Record,' Vol. 1, Page 1, 2, etc., as the case may be.

"I have advised the Recorder to continue the use of this volume until we shall have your opinion on same, and further, if the keeping of same is without sanction of law, this volume may then be continued by changing its title to that of Deed Book, numbered to follow the current Deed Book, and changing the entries in the Deed Index accordingly.

"I shall appreciate your opinion in the matter at your early convenience."

Section 2759, General Code, provides:

"The county recorder shall record in the proper record in a fair and legible handwriting, typewriting, or printing, all deeds, mortgages, or other instruments of writing required by law to be recorded, presented to him for that purpose. They shall be recorded in regular succession according to the priority of presentation, entering the file number at the beginning of such record. At the foot of the record of each instrument he shall record the date and precise time of day when it was presented for record."

Section 2757, General Code, reads:

"The recorder shall keep four separate sets of records, namely: First, a record of deeds, in which shall be recorded all deeds, powers of attorney, and other instruments of writing for the absolute and unconditional sale of conveyance of lands, tenements and hereditaments; Second, a record of mortgages, in which shall be recorded all mortgages, powers of attorney, or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or incumbered in law; Third, a record of plats, in which shall be recorded all plats and maps of town lots, and of the subdivisions thereof, and of other divisions or surveys or lands; Fourth, a record of leases, in which shall be recorded all leases and powers of attorney for the execution of leases. All instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record."

Other sections require the recorder to keep certain other sets of record books. Section 2757-1 provides that notices of liens for federal internal revenue taxes, shall be kept in a book "known as the federal tax lien index." Section 8314 requires the recorder to record affidavits for mechanic's lien "in a separate book to be kept therefor."

Certain other sections require instruments to be recorded in a book, but do not in terms specify that such book shall be used exclusively for recording those particular instruments. Section 2770 provides for the recording of soldiers' discharges "in a book to be furnished * * * for that purpose." Section 8340 requires statements of labor claims creating a lien to be recorded "in a book." Section 13435-7, relative to liens upon the property of sureties on a recognizance, requires the recorder to keep an index book containing notices of lien and notices of discharge.

Public officers, including county recorders, have only those powers and duties prescribed by statute. There is no section of the Code which in terms provides that "easements" shall be recorded in a separate book, or even that they shall be

entitled to record. It follows that the recorder's duty with reference to easements must be found from reading the sections referred to above. It appears that Section 2757 contains the only provision which could have any application to the method of recording instruments creating easements.

In an opinion of this office reported in Opinions of the Attorney General 1928, Volume 4, page 2808, it was held as appears from the syllabus:

"An instrument of writing in which it is stated that the grantor grants, bargains, sells, conveys and warrants to the grantee, its successors and assigns forever, a right of way and easement with the right, privilege and authority to said grantee, its successors, assigns, lessees and tenants, to construct, erect, operate and maintain a line of poles and wires for the purpose of transmitting electric or other power, including telegraph or telephone wires, in, on, along, over, through or across properly described lands for a consideration stated, and containing the statement that the grantee is to have and to hold an interest in said land unto said grantee, its successors and assigns, properly signed and acknowledged in the presence of witnesses, and duly acknowledged before an officer authorized in the premises, is an instrument of writing for the absolute and unconditional sale and conveyance of an interest in lands, tenements or hereditaments and should under the provisions of Section 2757, General Code, be recorded in the record of deeds."

This opinion was approved and followed by my predecessor in an opinion which will be found in Opinions of the Attorney General, 1929, Volume 1, page 481. The instruments creating easements which were before my predecessors, and considered in these two opinions, were identical in form. It appears in the inquiry, answered by the 1929 opinion, that the practice of the recorder there in question, had been to record easements in a "special record." My predecessor considered this practice unauthorized by the statute.

It is clear that when easements are created by "instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements and hereditaments" they should be recorded in the record of deeds and not in a "special record" or "easement record." Thus it appears that easements granted or reserved by deed, the ordinary method of creating easements by act of the parties, are entitled to record in the deed book, under Section 2757, and it further appears that the recorder is without authority to keep a special set of books for recording easements. It follows that the recorder should be advised to discontinue the use of the easement record book. I see no objection to the method outlined by you for changing the record.

Respectfully,

JOHN W. BRICKER,

Attorney General.

313.

PUBLICATION—ORDINANCES—MUST BE PUBLISHED IN ENTIRETY
UNLESS OTHERWISE PROVIDED BY CHARTER OF MUNICIPALITY.

SYLLABUS:

Ordinances of a general nature, except in municipalities organized under section 7, article XVIII of the Ohio constitution which have specifically provided