

1668.

ASSIGNMENT—OIL AND GAS LEASES ASSIGNED IN ONE INSTRUMENT—RECORDING FEES CHARGEABLE BY COUNTY RECORDER.

SYLLABUS:

Where the owner of a number of oil and gas leases assigns his interest therein to another in one instrument, such instrument is included in the term "other instrument of writing" within the provisions of Section 2778 of the General Code, and the recorder should charge twelve cents for each hundred words actually written for recording, and five cents for each grantor and each grantee therein for indexing said instrument.

COLUMBUS, OHIO, March 25, 1930.

HON. DON ISHAM, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—Acknowledgment is made of a communication from your office, which reads:

"Will you please give me your opinion on the following question?

Smith is the owner of a large number of oil and gas leases. He releases or assigns all of his leases. The assignment or release of all of these leases is incorporated in one instrument and presented to the county recorder for recording.

QUESTION: May the recorder charge 25c for each release or assignment contained in the instrument presented for recording, or must he accept it as one instrument and be limited to a charge of 25c for recording the entire instrument, as provided in Sections 8546-4 and 8547, General Code?"

Section 8518, of the General Code, which relates to the assignment of interests in oil and gas leases, provides:

"All leases and licenses and assignments thereof, or of any interest therein, given or made, for, upon, or concerning lands or tenements in this state, whereby any right is given or granted to operate, or to sink or drill wells thereon for natural gas and petroleum or either, or pertaining thereto, shall be filed for record, forthwith, and recorded in such lease record, without delay, and not be removed until recorded."

Section 8519 of the General Code, which relates to oil and gas leases, provides:

"No such lease or license shall have any force or validity until it is filed for record as aforesaid, except as between the parties thereto, unless the person claiming thereunder is in actual and open possession."

While the above sections provide for the recording of such instruments as you mention, they do not undertake to make special provision with reference to the charge for such recording. It will therefore be necessary to look to more general provisions of the statutes in order to determine what fee is to be charged. It may be observed, however, that the assignment of a number of separate leases in one instrument would not necessarily change the character of the instrument.

In the execution of deeds, frequently a number of tracts may have been conveyed to the grantor in separate parcels from as many different persons as there

are parcels, yet a deed executed by the present owner would be but one deed and should be recorded as such. By analogy the same situation obtains with reference to an assignment of an oil and gas lease covering a number of different tracts of land in which the grantor has an interest.

Your attention is directed to the provisions of Section 2778 of the General Code, which reads:

“For the services hereinafter specified, the recorder shall charge and collect the fees provided in this and the next following section. For recording mortgage, deed of conveyance, power of attorney or other instrument of writing, twelve cents for each hundred words actually written, typewritten or printed on the records and for indexing it, five cents for each grantor and each grantee therein; for certifying copy from the record, twelve cents for each hundred words.

The fees in this section provided shall be paid upon the presentation of the respective instruments for record upon the application for any certified copy of the record.”

Analyzing the provisions of the section last above quoted, it will be disclosed that the same is rather broad, covering mortgages, deeds of conveyance, powers of attorney or “other instrument of writing”. The assignment which you describe is undoubtedly another instrument of writing, within the meaning of Section 2778, supra. It therefore follows that when the same is recorded, a charge of twelve cents for each hundred words actually written, typewritten or printed on the records and five cents for each grantor and each grantee therein should be charged for such recording and indexing.

Sections 8546-4 and 8547 of the General Code, to which you refer, would seem to have no application to the question you present, for the reasons that those sections relate specifically to mortgages, and do not include assignments of leases.

Based upon the foregoing, and in specific answer to your inquiry, it is my opinion that where the owner of a number of oil and gas leases assigns his interest therein to another, such instrument is included in the term “other instrument of writing” within the provisions of Section 2778, of the General Code, and the recorder should charge twelve cents for each hundred words actually written for recording and five cents for each grantor and each grantee therein for indexing said instrument.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1669.

COUNTY AUDITOR—UNAUTHORIZED TO DEDUCT FROM ASSESSED VALUATION OF TAX-PAYER'S REALTY THE DECREASE IN VALUATION RESULTING FROM APPROPRIATION OF PART OF SUCH REALTY FOR RAILROAD PURPOSES.

SYLLABUS:

Under the provisions of Section 2591, General Code, the county auditor is not authorized or required to make a deduction from the assessed valuation of real