

2149.

REAL ESTATE — WHERE QUARTER SECTIONAL INDEXES PROVIDED UNDER SECTION 2766 G. C., COUNTY RECORDER REQUIRED TO INDEX MORTGAGES IN EACH INDEX IF PROPERTY LOCATED IN TWO OR MORE QUARTER SECTIONS—MAY CHARGE ONLY ONE INDEX FEE—SECTION 2778 G. C.

SYLLABUS:

1. *In cases where real estate is situated in or extends into two or more quarter sections, the county recorder is required to index mortgages on such property in each index for the quarter section in which such real estate is situated or extends, if quarter sectional indexes have been provided for by the county commissioners in accordance with Section 2766 of the General Code.*

2. *Under Section 2778 General Code, the county recorder is authorized to charge only one index fee irrespective of in how many sections or divisions the land described is located.*

Columbus, Ohio, April 6, 1940.

Hon. Martin E. Hoeffel, Prosecuting Attorney,
Napoleon, Ohio.

Dear Sir:

Your communication for my opinion has been received. It is quoted as follows:

"The County Commissioners of Henry County, Ohio, have provided quarter sectional indexes for the County Recorder's Office as provided by Section 2766 of the General Code which quarter sectional indexes have been completed to date as provided by said Section. The County Recorder has been maintaining and keeping a daily register of the deeds and mortgages as provided by Section 2765 of the General Code. Under Section 2767 of the General Code the County Recorder is required to keep up the General Indexes provided for by Section 2766.

I would like to know if the County Recorder is required to index in the quarter sectional index mortgages on railroad rights of way and other public utility rights of way where the right of way crosses the entire county. If the Recorder is required to do this, is the Recorder required to index this mortgage in every quarter section through which the right of way runs, and if so, can the County Recorder charge any fee to the mortgage holder for the extra work involved in indexing this type of a mortgage in the various quarter sections of the sectional index?"

In consideration of the two questions contained in your request, it is noted that Section 2764 of the General Code is pertinent and that said section provides in a general way for the manner in which each written instrument for the conveyance of any interest in real estate in every county shall be indexed by the recorder.

Section 2766 of the General Code pertaining to sectional indexes is quoted as follows:

"When in the opinion of the commissioners of any county sectional indexes are needed, and they so direct, in addition to alphabetical indexes provided for in section twenty-seven hundred and sixty-four, they may provide for the making in books prepared for that purpose, sectional indexes to the records of all real estate in the county, beginning with some designated year and continuing

through such period of years as they may specify, by placing under the heads of the original surveyed sections or surveys, or parts of a section or survey, squares, subdivisions or lots, on the left hand page, or on the upper portion of such page of such index book, first the name of the grantor or grantors; second, next to the right, the name of the grantee or grantees; third, the number and page of the record where the instrument is found recorded; fourth, the character and date of the instrument, to be followed by a pertinent description of the property conveyed by the deed, lease or assignment of lease; and on the opposite page, or on the lower portion of the same page beginning at the bottom, in like manner, all the mortgages, liens or other incumbrances affecting said real estate.

The compensation for the services rendered under this section shall be paid from the general revenue fund of the county and no additional levy shall be made in consequence thereof. And in the event that the county commissioners decide to have such sectional index made then such commissioners shall advertise for three consecutive weeks in one newspaper of general circulation in the county and for sealed proposals to do said work as provided herein, and shall let said work to the lowest and best bidder, and shall require him to give bond for the faithful performance of the contract, in such sum as the said commissioners may fix, and said work shall be done to the acceptance of the bureau of uniform accounting of this state upon allowance by such commissioners; and such commissioners shall have power to reject any and all bids therefor, provided that no more than five cents shall be paid for each entry of each tract or lot of land."

Section 2767 of the General Code provides as follows:

"When brought up and completed, the recorder shall keep up the general indexes described in the next preceding section."

Section 2778 of the General Code in reference to indexing and recording fees for deeds, mortgages, etc., is quoted as follows:

"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 or upon the application for any certified copy of the record."

It is significant that the history of Sections 2764, 2766, 2767, and 2778 of the General Code, providing for the method of indexing and recording instruments for the conveyance or transfer of real estate reveals that all of these sections were considered and enacted by the legislature during the same session.

Answering the first question of your communication, it is observed that Section 2767, General Code, *supra*, demands that when sectional indexes are authorized and provided for by the county commissioners it shall be the duty of the recorder to keep them up-to-date. This duty is imposed upon the county recorder by the provisions of Section 2767 of the General Code, *supra*. By implication, it is clearly the function of the recorder where an instrument covers a tract of land in more than one section or division of the county to index it in every section or division where such land is located. Otherwise, Section 2766 of the General Code would be meaningless and the purpose of said statute would not be accomplished. While it is admitted the same facts appear in the general alphabetical index, the greater convenience, for purposes of research, of having the information listed in a record, each page of which is devoted to a particular tract or section is apparent. Therefore, it is my conclusion that any other construction of Section 2766, General Code, would be contrary to the intent of the legislature at the time this law was adopted.

A portion of Section 2778, General Code, definitely stipulates that the recorder for indexing mortgages, deeds, etc., shall charge and collect an index fee of five cents for each grantor and each grantee therein. There is no authority for charging an additional index fee where the commissioners see fit under the statute to provide for and cause to be maintained a sectional index to supplement the general alphabetical index authorized under Section 2764 of the General Code.

In support of this view, Vol. 53 C. J. 617, Section 25, is quoted in part as follows:

“Under such a statute it is the duty of the recording officer to charge such a fee for recording every instrument and no officer has authority to change the fees, or to depart from the terms prescribed. Thus county commissioners cannot require the recording officer to record written instruments at any different fee than that prescribed by the statute.”

In view of the law under similar statutes in other states the recorder would be authorized to charge only one index fee for each instrument presented to him for indexing and recording.

Therefore, on the facts presented and the law governing these facts, it is my opinion that in a county where sectional indexes are authorized and provided for by the county commissioners in accordance with Section 2766 of the General Code, the recorder is required to index in each of the indexes

every written instrument of conveyance covering the quarter sections through which such railroad right of way extends. Secondly, under Section 2778, General Code, the county recorder is authorized to charge only one index fee irrespective of in how many sections or divisions the land described is located.

Respectfully,

THOMAS J. HERBERT,
Attorney General.