

308

RECORDER, COUNTY—NOT REQUIRED BY LAW TO RECORD SURVEY OF LANDS AND MAPS PRESENTED BY REGISTERED CIVIL ENGINEER AND SURVEYOR—PROVISO, IF SUCH INSTRUMENTS HAVE NOT BEEN ACCEPTED BY OWNER OR PUBLIC OFFICIAL.

SYLLABUS:

The county recorder is not required by law to record survey of lands and maps presented to him by a registered civil engineer and surveyor if same have not been accepted by the owner and/or public official.

Columbus, Ohio, March 29, 1949

Hon. William E. Didelius, Prosecuting Attorney
Erie County, Sandusky, Ohio

Dear Sir:

This is to acknowledge receipt of your letter which reads as follows:

"A registered Civil Engineer and Surveyor has presented to the County Recorder of Erie County for record, several maps setting out the results of surveys made by him of various lands in Erie County, which surveys and maps were made by him at the instance of the respective owners of the lands surveyed. These maps purport to show the surveyor's conclusions as to the location and dimensions of boundary lines established by prior conveyances of record; however, they do not purport to affect the record title to the lands surveyed. Although each such map bears a certificate of the surveyor to the effect that it is correct and agreeable to the survey made by him, it bears no notation indicating that it has been accepted or adopted by the owner or owners of the lands, nor does it bear any notation indicating that it has been accepted or approved by any public official or public body.

This Civil Engineer and Surveyor has also presented to the County Recorder for record several maps, each of which purports to be a survey map of a 'proposed subdivision' of certain parcels of land. Each such map is similar in form to the usual plat of a subdivision, except that it is labeled as a map of a 'proposed subdivision,' bears no notation indicating that it has been accepted or adopted by the owner or owners of the land, and bears no nota-

tion indicating that it has been accepted or approved by any public official or public body.

I would appreciate your opinion as to whether the County Recorder is authorized and/or required to record such maps in the Record of Plats of Erie County."

The question presented, as I understand it, is this: Is the county recorder required by law to record Survey of Lands and Maps presented to him by a registered civil engineer and surveyor if same have not been accepted by the owner and/or public official?

County recorders are ministerial officers having only such powers and duties as are expressly given them by statute and such as are naturally and necessarily implied therefrom. The duties of the county recorder with respect to recording instruments presented to him for record are set forth in Section 2757, General Code. Said section reads as follows:

"The recorder shall keep five separate sets of records, namely: * * * Fourth, 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 of lands*, and any center line survey of a highway located within the county, *the plat of which shall be furnished by the director of highways or the county engineer; * * **" (Emphasis added.)

There are certain prerequisites established by law relative to entitlement of maps and surveys to record. Said prerequisites are set out in Section 3583 of the General Code of Ohio, which reads in part:

"After the plat or map is completed, it shall be certified by the surveyor, *and acknowledged by the owner or owners before an officer authorized to take the acknowledgment of deeds, who shall certify his official act on the plat or map.* * * * Provided, however, that no plat or map certifying lands outside of a municipal corporation, wherein the proprietor shall dedicate public highways, shall be entitled to be recorded without the approval thereon of the county commissioners of the county. * * *" (Emphasis added.)

It is apparent from the aforementioned sections that the county recorder is required to record plats, but only upon presentation by proper persons. In the instant question, assuming that the lands lie outside a mu-

nicipality, the proper person would be the director of highways or the county engineer.

At page 682, Volume 38 Ohio Jurisprudence, it is said :

“Any other surveys made in the county by competent surveyors duly certified by such surveyor to be correct and deemed worthy of preservation may, by order of the commissioners, be recorded by the county surveyor. Since it is the intention of the legislature to preserve by record surveys which, from their nature, are likely to become useful after the lapse of years, by whomsoever they might be made, and since it has vested no power anywhere to determine the question of their usefulness, except in the county commissioners, this legislative object is attained by applying the phrase ‘deemed by the county commissioners worthy of preservation,’ to all private surveys, including those made by the county surveyor or his deputies, and thus none is required to be recorded unless the county commissioners deem them worthy of preservation.”

In view of the foregoing, it is my opinion that the county recorder is not required by law to record survey of lands and maps presented to him by a registered civil engineer and surveyor if same have not been accepted by the owner and/or public official.

Respectfully,

HERBERT S. DUFFY,

Attorney General.