

4627.

RECORDING FEES—ASSIGNMENT OF MORTGAGES BY SEPARATE INSTRUMENT—COUNTY RECORDER NOT REQUIRED TO RECORD ASSIGNMENT ON EVERY MORTGAGE—FEE SAME AS FOR RECORDING DEEDS.

SYLLABUS:

1. *When an assignment of mortgages is made by separate instrument by authority of Section 8546-4, General Code, and recorded in the book kept by the recorder as provided by Section 8547, General Code, the county recorder need not record such assignment on the margin of every mortgage and therefore he is not legally entitled to charge the sum of twenty-five cents for each entry.*

2. *Where a separate instrument containing an assignment of mortgages is filed with the recorder of the proper county, the same shall be recorded in the book kept by the recorder for recording the discharge of mortgages and he shall be entitled only to the same fees for recording such instrument as for recording deeds.*

COLUMBUS, OHIO, September 20, 1932.

HON. DONALD J. HOSKINS, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

"The Central United National Bank of Cleveland, Ohio, are assigning, transferring and setting over to The Columbian Building and Loan Company of this city, their right, title and interest in certain mortgages amounting in number to about 1700. They have prepared a separate assignment which includes all of the mortgages and are asking the County Recorder of Franklin County, Ohio, to file this separate instrument assigning all of said mortgages to The Columbian Building and Loan Company. This assignment is properly acknowledged and witnessed, etc.

The assignor claims that this separate assignment of all of these mortgages together should be recorded in a book kept for that purpose, and the recording fee should be the same as is the recording of deeds.

The County Recorder is contending that he must make marginal notations on the margin of every mortgage and that he is therefore entitled to a fee of 25c for each entry. There are about 1700 mortgages in this assignment.

My question is whether the County Recorder is required to make marginal references or notations on the margins of each mortgage, and if so whether he is permitted to legally charge the sum of 25c for each entry? Second, whether the assignor can have this separate instrument recorded and pay the recorder a fee equivalent to the recording of a deed?

I might say that under the contention of the assignor the fee would perhaps be \$75.00. If the contention of the County Recorder is correct, the fee would be in the neighborhood of \$700.00.

I call your attention to Sections 8546-3, -4, 8547 and 8549, G. C." Section 8546-3, General Code, reads as follows:

"A mortgage may be assigned or partially released by the holder thereof, by writing such assignment or partial release on the original mortgage, or upon the margin of the record thereof, and signing the same. Such assignment or partial release need not be acknowledged or witnessed, but if written upon the margin of the record the signing thereof must be attested by the county recorder. Such assignment, whether it be upon the mortgage, or upon the margin of the record thereof, or by separate instrument, shall have the effect of transferring not only the lien of said mortgage, but also all interest in the land described therein. For entering such assignment or partial release upon the margin of the record, or for attesting the same, the county recorder shall be entitled to the same fee as is provided by section 8549 of the General Code."

Section 8549, General Code, provides for a twenty-five cent fee to be charged by the recorder for recording a satisfaction of mortgage, or permitting it to be recorded by the mortgagee.

It should be noted that Section 8546-3 does not require that an assignment of a mortgage by separate instrument be entered on the margin of the record.

Section 8546-4, General Code, relative to an assignment of a mortgage by separate instrument, reads as follows:

"A mortgage may also be assigned or partially released by a separate instrument of assignment or partial release, duly acknowledged and witnessed as is provided for deeds and other instruments for the transfer of an interest in real estate. Such separate instrument of assignment or partial release shall be recorded in the book provided by section 8547 of the General Code for the recording of satisfactions of mortgages, and the recorder shall be entitled to charge the same fee for recording such separate instruments of assignment and partial release as is provided by said section 8547 of the General Code."

An examination of said section does not reveal any duty imposed upon the county recorder to enter such assignment on the mortgage record.

Section 8547, General Code, referred to in the preceding section and in your communication, is as follows:

"A mortgage also must be discharged upon the record thereof by the recorder of the proper county when there is presented to him a certificate executed by the mortgagee or his assigns, properly acknowledged and witnessed in the manner provided for deeds and other instruments for the transfer of real estate, certifying that the mortgage has been fully paid and satisfied. In addition to the discharge on the records by the recorder, such certificate shall be recorded in a book kept for that purpose by the recorder. He will be entitled to the same fees for recording the certificates as for recording deeds."

From an examination of the above sections, there appears to be no duty placed upon the county recorder to enter assignments contained in a separate instrument recorded in the manner provided by Section 8546-4 upon the margin of every mortgage.

In an opinion found in Opinions of the Attorney General for 1930, p. 1072, which held that a county recorder has no authority to charge for making a

marginal reference to an assignment on the original record of a lease, I pointed out that while the service of the recorder in placing the marginal reference on the records was commendable and no doubt of material assistance in examining the same, nevertheless it is a well established principle of law in this state that a public officer may not collect fees except such fees as are expressly authorized to be collected by statute, and consequently no fee could be charged therefor.

In this respect, it is interesting to note the provisions of Section 8548-1, General Code, which reads:

“Whenever the county recorder in making photostatic or photographic record, shall have left no margin suitable for the entering or recording of assignments, cancellations or further transactions relating to the instruments so recorded, or whenever it shall be completely filled with assignments, cancellations or further transactions relating to the instruments so recorded, such transactions shall be affected (effected) by separate instruments executed and recorded according to law.”

It is apparent therefrom that in those cases where it is impossible to record on the margin of the record of the mortgage assignments, cancellations or further transactions relating to instruments recorded because of lack of space, the same may be effected by separate instruments executed and recorded according to law.

This provision strengthens the conclusion impelled from those actions relative to the manner in which the county recorder shall record various assignments, namely, that the same when made by separate instrument need not be entered upon the margin of the mortgage or upon the mortgage record, but if such assignments are so recorded, no fees may be charged therefor.

In view of the foregoing and in specific answer to your first inquiry, I am of the opinion that when an assignment of mortgages is made by separate instrument by authority of Section 8546-4, General Code, and recorded in the book kept by the recorder as provided by Section 8547, General Code, the county recorder need not record such assignment on the margin of every mortgage and therefore he is not legally entitled to charge the sum of twenty-five cents for each entry.

As to your second inquiry, an examination of Sections 8546-4 and 8547, General Code, reveals that the assignment of a mortgage by separate instrument is expressly authorized therein and the manner and place of so doing and the fee charged therefor are expressly set forth.

Consequently, I am of the opinion that where a separate instrument containing an assignment of mortgages is filed with the recorder of the proper county, the same shall be recorded in the book kept by the recorder for recording the discharge of mortgages and he shall be entitled only to the same fees for recording such instrument as for recording deeds.

Respectfully,
GILBERT BETTMAN,
Attorney General.