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1. COUNTY RECORDER — NOT LEGALLY ENTITLED TO CHARGE TWENTY-FIVE CENTS FOR SEPARATE MARGINAL RELEASE OF EACH INSTRUMENT, NUMBER OIL AND GAS LEASES PRESENTED FOR BLANKET CANCELLATION — SECTION 2779 G.C.

2. LEGAL CHARGE, TWELVE CENTS, EACH ONE HUNDRED WORDS FOR RECORDING, FIVE CENTS EACH GRANTOR AND EACH GRANTEE TO INDEX — “OTHER INSTRUMENTS OF WRITING” — SECTION 2778 G.C.

SYLLABUS:

1. *When a blanket cancellation of a number of oil and gas leases is presented to a county recorder for recording, such recorder is not legally entitled under the provisions of Section 2779, General Code, to charge the sum of twenty-five cents for the separate marginal release of each instrument.*

2. *Such a blanket cancellation is included in the term “other instruments of writing” within the provisions of Section 2778, General Code, and a county recorder should charge twelve cents for each one hundred words actually written for recording and five cents for each grantor and each grantee therein for indexing said blanket cancellation.*

Columbus, Ohio, August 12, 1941.

Hon. Glenn L. Fortune, Prosecuting Attorney,
Carrollton, Ohio.

Dear Sir:

Your recent request for my opinion reads as follows:

“A question has arisen in the office of the Recorder of Carroll County, Ohio, wherein a certain oil company brought in a blanket cancellation covering eighty-four oil and gas leases which required not only the recording of said blanket document but also the marginal cancellation and page reference on the individual pages where said eighty-four leases were recorded, and which also required a separate release in the Range Index Book of said Recorder’s Office.

Under Section 8549 of the General Code of Ohio, and also Section 8572 of the General Code of Ohio, and Section 2779 of the General Code of Ohio, the law seems to indicate that a charge of twenty-five cents shall be made for marginal cancellations. The question upon which your opinion is requested is:

‘Shall the Recorder of Carroll County charge only the fee for recording the single blanket cancellation covering said eighty-four leases, or is said Recorder entitled to charge the sum of twenty-five cents for the separate marginal release of each instrument in addition to the regular fee for said blanket cancellation instrument?’”

The statutory provisions governing the office of county recorder are contained in Sections 2750 to 2781, inclusive, General Code. Section 2757, General Code, in so far as it is pertinent to your question, reads as follows:

“The recorder shall keep four separate sets of records, namely: * * * Fourth, a record of leases, in which shall be recorded all leases and powers of attorney for the execution of leases. * * * ”

Section 8518, General Code, reads as follows:

“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.”

The matter brought under consideration by your request is as to recording, indexing and determining the proper fees for such services with reference to a single blanket cancellation of several separate leases and the recording of such blanket cancellation, together with suitable indexing thereof, in connection with the lands of each lessor upon the margin of the several separate leases, with similar and suitable cross-reference to the volume and page wherein the blanket cancellation may be made to appear of record, and all to the ultimate purpose of existing recording statutes, but without a specific statutory routine being provided for the guidance of the county recorder in the instant matter of your inquiry.

Provision is made by statute for the release and cancellation of mortgages to be copied upon the margin of the record (Section 8546, General Code), and there is further provision that for such service a fee

of twenty-five cents shall be charged by the recorder (Section 8549, General Code). It is axiomatic that a public officer may only collect fees that are expressly authorized to be collected by statute.

Inasmuch as there is no statutory authority for the charging of fees to which you specifically refer, it will therefore be necessary to look to more general provisions of the statutes in order to determine what fee is to be charged. Section 2778, General Code, reads 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 provisions of the above section are rather broad, covering mortgages, deeds of conveyance, powers of attorney or other *instruments of writing*. The blanket cancellation which you describe is undoubtedly another instrument of writing within the purview of Section 2778, General Code, *supra*.

In Opinions of the Attorney General for the year of 1932, Volume II, page 1067, the question presented to the then Attorney General was whether a county recorder in accepting an assignment of a number of mortgages evidenced by a separate instrument could charge the sum of twenty-five cents for recording each assignment on the margin of every mortgage. The syllabus of the said opinion reads as follows:

“I. 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.”

In an opinion of a former Attorney General, which will be found in the reported Opinions of the Attorney General for 1930, Vol. II, at page 1072, the question there presented was whether the county recorder had the authority to charge for making a marginal reference to an assignment on the original record of the lease. The opinion at page 1073 incorporates and quotes the syllabus of a former opinion of the same year, appearing as Opinion No. 1668 at page 463 of Vol. 1 of the Opinions of the Attorney General for 1930, which reads as follows:

“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.”

In the course of the second opinion of the year 1930, it was said at page 1073:

“The service of the recorder in placing the marginal reference upon the records is commendable and no doubt is of material assistance to those having occasion to make a search of the records. In its nature it is a form of indexing and Section 2778 of the Code has already prescribed a fee of five cents (5c) for each grantor and each grantee in connection with indexing.”

Considering the special provision (Section 2778, General Code, *supra*,) which establishes a maximum per one hundred word fee or charge for recording such an instrument in writing, and also a stipulated amount for indexing as appears in the language of the statute as follows:

“ * * * and for indexing it, five cents for each grantor and each grantee therein * * * ”

The logic and reasoning employed in the 1930 opinions, *supra*, would seem to be applicable to the instant question, especially if we adopt the further conclusion and apply the words of the syllabus of the opinion found at page 1072, Vol. II of the Opinions of the Attorney General for 1930, reading as follows:

“A county recorder has no authority to make a charge for making a marginal reference to an assignment on the original record of a lease.”

By analogy to the effect that the cancellation of a lease is to be regarded as in the same category as an assignment of a lease and so to be distinguished definitely from a release of a mortgage, it may be here observed that by a similar analogy based upon a different classification of the instrument about which you inquire, that is to say, if I were to conclude that such an instrument as a blanket cancellation or cancellation of a lease is in the same category as a cancellation of a mortgage, then and in that event it would follow that the charge or fee for the recording thereof should be twenty-five cents each for the entry of such release or satisfaction upon the margin of the record of the originally recorded lease. Such classification would bring it within the provisions of Section 2779, General Code, reading in part as follows:

“For recording assignment or satisfaction of mortgage or discharge of a soldier, twenty-five cents * * * ”

Reasserting the classification of a cancellation of a lease as in the class of an assignment of a lease and so regarding the instrument, I therefore adopt the above cited opinions and reach a conclusion as follows:

1. When a blanket cancellation of a number of oil and gas leases is presented to a county recorder for recording, such recorder is not legally entitled under the provisions of Section 2779, General Code, to charge the sum of twenty-five cents for the separate marginal release of each instrument.

2. Such a blanket cancellation is included in the term “other instruments of writing” within the provisions of Section 2778, General Code, and a county recorder should charge twelve cents for each one hundred words actually written for recording and five cents for each grantor and each grantee therein for indexing said blanket cancellation.

Respectfully,

THOMAS J. HERBERT,
Attorney General.