

2705.

COUNTY RECORDER—DUTY TO CHARGE FEE FOR RECORDING WORDS IN DEED, ALSO FOR PLAT OR MAP BY PHOTOSTATIC OR PHOTOGRAPHIC PROCESS.

SYLLABUS:

Where a deed contains a map or plat of the territory being deeded, and such deed and map or plat are being recorded by photostatic or photographic process, it is the duty of the county recorder to charge a fee of twelve cents for each hundred words photographed or photostated upon the records, and in addition thereto the fee prescribed in section 2779, General Code, for recording a plat or map by the photostatic or photographic process.

COLUMBUS, OHIO, May 21, 1934.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Section 32-1, General Code, authorizes county recorders to make records of instruments presented for recording by the photographic or photostatic processes.

Section 2778 of the General Code provides the fees of a recorder for recording a mortgage, deed of conveyance, power of attorney or other instrument in writing—twelve cents per hundred words for words actually written or printed on the records. Section 2779 of the General Code provides a fee for recording a plat, not to exceed six lines for \$1.00, and for each additional line ten cents.

In case a deed contains a map or plat of the territory being deeded, and such deed and map or plat are being recorded by photostatic or photographic process, is the recorder required to charge a fee of twelve cents for each hundred words photographed or photostated upon the records, and in addition thereto the fee prescribed in Section 2779 for recording a plat or map by the photostatic or photographic process?”

Sections 2778 and 2779, General Code, read as follows:

Section 2778. “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.”

Section 2779. “For recording assignment or satisfaction of mortgage or discharge of a soldier, twenty-five cents; for each search of the record, without copy, fifteen cents; for recording any plat not exceeding six lines, one dollar; and for each additional line, ten cents.”

In an opinion to be found in Opinions of the Attorney General for 1933, Volume I, page 194, this office held that the recording of instruments by photostatic or photographic process is included within the provisions of section 2778, supra. The syllabus of this opinion reads as follows:

"The photostatic or photographic process, authorized by section 32-1 of the General Code, is included within the term 'printing' as used in section 2778, and therefore a county recorder using such process for recording instruments, may collect the fees specified in that section."

The following appears in the opinion at page 196:

"Even though the ordinary conception of printing at the time of the enactment of section 2778 involves reproduction by the use of pressure, it does not follow that a new and different method of obtaining the same result is not within the meaning of the term. It is a well settled principle that the law becomes applicable to new inventions as new inventions come into use, without the same being especially included."

It clearly follows that the reasoning of the above opinion would be applicable to section 2779, and that a plat or map might be recorded by photostatic or photographic process.

However, I assume that your question relates principally to the authority of the county recorder to charge fees for recording an instrument, which, in addition to being in the usual form of a conveyance, has a map or a plat in the same instrument. Obviously, the ordinary mortgage, deed of conveyance, or other instrument of writing is subject to the recording fees chargeable under the provisions of section 2778. For recording a plat or map, the fees provided in section 2779 must be charged. Sections 2778 and 2779 were passed at the same time and are in *pari materia*. Obviously, the legislature intended that the county recorder should be compensated for his services rendered in the recording of various instruments. It would appear reasonable that, under the circumstances presented in your inquiry, the legislature intended a fee of twelve cents for each hundred words to be charged for recording the conveyance itself, and if the deed contains a plat or map, the fees prescribed in section 2779 should be charged for recording the map or plat.

It is therefore my opinion, in specific answer to your question, that where a deed contains a map or plat of the territory being deeded, and such deed and map or plat are being recorded by photostatic or photographic process, it is the duty of the county recorder to charge a fee of twelve cents for each hundred words photographed or photostated upon the records, and in addition thereto the fee prescribed in section 2779, General Code, for recording a plat or map by the photostatic or photographic process.

Respectfully,
JOHN W. BRICKER,
Attorney General.