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COUNTY AUDITOR — MANDATORY DUTY TO ENDORSE ON DEED OR EVIDENCE OF TITLE THAT PROPER TRANSFER OF DESCRIBED REAL ESTATE HAS BEEN MADE OR IS NOT ENTERED FOR TAXATION — AUDITOR NOT RELIEVED OF DUTY TO ENDORSE “TRANSFERRED” IF ALL PROPERTY DESCRIBED IN DEED DOES NOT APPEAR ON TAX LISTS UNDER NAME OF GRANTOR — SECTION 2573 G.C.

SYLLABUS:

Upon compliance with the terms of Section 2573, General Code, it is the mandatory duty of a county auditor to endorse on the deed or other evidence of title presented to him that the proper transfer of the real estate therein described has been made or that it is not entered for taxation. The fact that all of the property described in the deed, which is in otherwise proper form, does not appear on the tax lists under the name of the grantor does not relieve the auditor of his duty to endorse the same “Transferred.”

Columbus, Ohio, May 15, 1942.

Hon. William A. Ambrose, Prosecuting Attorney,  
Youngstown, Ohio.

Dear Sir:

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

“A warranty deed, in all respects properly executed, containing three parcels of land is presented to the auditor for transfer. Parcel one and two are in the name of the grantor, and of course, the auditor is willing to transfer these two parcels and make the customary notation on the deed ‘Transferred.’

However, parcel three is not in the name of the grantor, and the auditor does not feel that he can transfer parcel three, and so endorse the deed, in view of the fact that his records show the grantor not to be the owner of said parcel.

My questions are:

1. Must the auditor accept such deed in its entirety, and endorse thereon ‘Transferred’?
2. Can the auditor transfer parcel one and two, and endorse the deed as to parcel three ‘Parcel three not transferred’?

3. Can the recorder accept the deed and record parcel one and two, and refuse to record parcel three upon the grounds, and for the reason that it has not been transferred by the auditor, as required by Section 2768, General Code, which provides, among other things, as follows:

‘The county recorder shall not record any deed of absolute conveyance of land or any conveyance, absolute or otherwise, of minerals or mineral rights until it has been presented to the county auditor, and by him indorsed ‘transferred’, or ‘transfer not necessary.’

4. Must the recorder accept and record the deed in its entirety, when it contains the notation to the effect that parcel three has not been transferred, or, if he accepts it, must he record all three parcels with the notation that parcel three has not been transferred, or can he ignore parcel three, and just record parcels one and two which have been transferred?”

The duties of the county auditor with respect to the transfer of property for tax list purposes are set forth in Section 2573, General Code, which reads as follows:

“On application and presentation of title, with the affidavits required by law, or the proper order of a court, the county auditor shall transfer any land or town lot or part thereof or minerals therein or mineral rights thereto, charged with taxes on the tax list from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition, devise, descent or otherwise. If by reason of the conveyance or otherwise, a part only of a tract or lot, or minerals therein or mineral rights thereto, as charged in the tax list is to be transferred, the person desiring the transfer shall make satisfactory proof of the value of such part compared with the value of the whole, as charged on the tax list, before the transfer is made. The auditor shall indorse on the deed or other evidences of title presented to him that the proper transfer of the real estate therein described has been made in his office or that it is not entered for taxation, and sign his name thereto.”

The evidence on which the auditor is required to act is prescribed in the foregoing section of the General Code and in the instant case, since we are not concerned with parts or portions of tracts or lots, the only evidence necessary is the presentation of title.

Upon compliance with the terms of the statute it is the mandatory duty of the auditor to endorse on the deed or other evidence of title presented to him that the proper transfer of the real estate therein described has been made or that it is not entered for taxation. Cincinnati College

v. LaRue, 22 O.S. 469; State, ex rel. v. Godfrey, 62 O.S. 18; Dye v. State, ex rel. 73 O.S. 231.

The mandatory aspects of the duties of the auditor under the provisions of Section 2573, supra, become more evident when read in connection with Section 2768, General Code, which provides in part as follows:

“The county recorder shall not record any deed of absolute conveyance of land or any conveyance, absolute or otherwise, of minerals or mineral rights until it has been presented to the county auditor, and by him indorsed ‘transferred,’ or ‘transfer not necessary.’”

In the case of State, ex rel. v. Godfrey, 62 O.S. 18, the court in interpreting the above quoted sections said, at page 23:

“The imperative nature of this duty of the auditor is manifest when Revised Statutes, Sec. 1025, is read in the light of Revised Statutes, Sec. 1159, which provides that ‘the recorder shall not record any deed of absolute conveyance of land until the same has been presented to the county auditor, and by him indorsed “Transferred” or “Transfer not necessary.”’ If when a deed, which is in due form, is presented to the auditor for transfer, he may, merely for the reason that he has theretofore issued a certificate to a purchaser at a delinquent tax sale, refuse to transfer the deed, whether it be the deed of the owner or, as in this case, a sheriff’s deed, the result is that such deed is excluded from the records, and the grantee named in the deed is by that act of the auditor prevented from giving to the world such constructive notice of his title as the record of deeds would, and is designed to, afford.”

Applying the same reasoning to the facts presented in your inquiry it would appear that it is incumbent upon the auditor to endorse the deed “Transferred,” in order that the instrument may be recorded and the rights of all parties preserved. The fact that title to parcel No. 3 is not in the name of the grantor does not relieve the auditor from the performance of his duty which arises upon application and presentation of the warranty deed. It is not the function of the auditor to pass upon the authenticity or validity of deeds. To invest him with such authority might possibly close the door to the recordation of valid instruments of conveyance which of course would be contra to the whole theory of law with respect to constructive notice.

This conclusion that the deed must be endorsed “Transferred” in

its entirety renders the consideration of questions 2, 3 and 4 of your inquiry unnecessary.

In specific answer to your request, therefore, it is my opinion that upon compliance with the terms of Section 2573, General Code, it is the mandatory duty of a county auditor to endorse on the deed or other evidence of title presented to him that the proper transfer of the real estate therein described has been made or that it is not entered for taxation. The fact that all of the property described in the deed, which is in otherwise proper form, does not appear on the tax lists under the name of the grantor does not relieve the auditor of his duty to endorse the same "Transferred."

Respectfully,

THOMAS J. HERBERT  
Attorney General.