

which the Clark Township District has been unjustly enriched at the expense of the Crawford Township District, by reason of the said erroneous distribution. This may be done without regard to the statute of limitations. If the two districts cannot agree, the Crawford Township District may bring suit against the Clark Township District and would, in my opinion, recover under the facts as stated by you in your inquiry. This recovery, however, would be limited to the amount that the Clark Township District had been unjustly enriched during the six years immediately preceding the date of the bringing of the action, provided the statute of limitations is pleaded by the defendant.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

1857.

COUNTY RECORDER—DUTY TO RECORD CERTIFICATE OF TAX COMMISSION CREATING LIEN UPON REAL PROPERTY OF SURETIES ON BOND OF DEALER IN MOTOR VEHICLE FUEL IN MORTGAGE RECORD BOOK—METHOD OF RELEASING SUCH LIEN.

*SYLLABUS:*

1. *It is the duty of a county recorder to record a certificate presented by the secretary of the Tax Commission of Ohio creating a lien upon real property of sureties on the bond of a dealer in motor vehicle fuel, under authority of section 5528-1, General Code, in the mortgage record book, authorized to be kept by such recorder under the provisions of section 2757, General Code.*

2. *A certificate releasing such a lien, issued in the manner prescribed by section 5528-1, General Code, should be recorded by a county recorder in the same manner that releases of mortgages are recorded.*

COLUMBUS, OHIO, November 10, 1933.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

Section 5528-1 of the General Code, as amended by Amended Senate Bill No. 149 of the 90th General Assembly, provides that the Tax Commission shall file in the office of the county recorder certain liens against the property of signers of the bond of a dealer in liquid fuel; it also provides for the filing of a certificate of release of such liens. In both instances, the law requires the recorder to record these instruments.

Question: In what book kept by the county recorder should such instruments be recorded?”

Section 5528-1, General Code, in so far as pertinent to your communication, reads as follows:

“\* \* \*

Where any person or persons shall be accepted by the tax commission as surety upon any bond required to be filed under the provisions of this section, there shall be filed with the commission a statement of the surety or sureties under oath showing real estate owned by such surety, together with any and all liens and/or encumbrances thereon as shown by the records of the auditor and recorder of the county in which such property is located which statement shall also show the appraised value of the interest and/or equity of such surety to be at least double the face value of such bond, and thereupon the secretary of the tax commission shall file with the recorder of such county a certificate, under the seal of the commission, setting forth the name of the dealer in whose behalf said bond is given and the amount of said bond, together with a description of the parcel or parcels of real estate owned in said county by such person or persons accepted as surety thereon, *which said certificate shall be recorded by such recorder and thereupon the amount of said bond shall become a lien upon said property and shall so continue until satisfied or released upon certificate of the secretary of the tax commission*, which certificate of release shall be furnished when other security has been offered by said dealer and accepted by the commission in lieu thereof or when the license of the dealer, in whose behalf such property has been pledged as security, shall have been cancelled and it shall have been found by the tax commission that such licensed dealer has paid to the state of Ohio all excise taxes upon motor vehicle fuel payable by him under the laws of this state, together with any and all penalties, interest and/or fines accruing by reason of any failure on the part of said dealer to make accurate reports of his receipts of taxable motor vehicle fuel and to pay the taxes, penalties, interest and/or fines accruing in connection therewith. The commission shall have the power to issue a certificate of partial release of the lien on real estate of such surety where property of an equivalent amount has been substituted therefor, or it appears that the value of the property remaining subject to the lien is satisfactory in amount to the commission. In the event that any person or persons thus accepted as surety and whose real estate has been thus subjected to a lien shall desire to terminate his or their liability to the state of Ohio by reason thereof, upon the filing with the tax commission of a written request by such surety to be thus released and discharged, said tax commission shall promptly notify the dealer thereof and unless such dealer shall on or before the expiration of sixty days after receipt of such notice file with the tax commission a new bond with a surety or sureties satisfactory to the tax commission in the amount and form in this section provided the commission shall forthwith cancel the license of said dealer. Promptly upon the expiration of sixty days after receipt from said surety of such written request for release or upon the filing of a new and acceptable bond with satisfactory sureties by the dealer, the tax commission shall proceed to determine whether said surety is subject to any claim of the state of Ohio for any unpaid taxes and/or penalties and interest accruing upon motor vehicle fuel under the laws of the state of Ohio by reason of such relationship as surety, and in the event no such liability is asserted the secretary of the tax commission shall furnish to said surety a certificate under the seal of the commission setting forth the fact that no liability is thus asserted and

describing the property owned by said surety subject to the lien of the state of Ohio for any such taxes and/or penalties and *said certificate upon presentation shall be recorded by the recorder of the county in which said property is located and shall operate from the date of recording as a release of such property therein described from such lien.*" (Italics the writer's.)

It is to be noted from the above quoted portion of section 5528-1, General Code, that the legislature has neither provided in what book kept by the county recorder the certificates should be recorded nor designated that such certificates be recorded in a separate book established for such purposes.

In my Opinion No. 312, rendered March 22, 1933, I held, as disclosed by the syllabus, as follows:

"1. There is no statutory authority for the county recorder to keep a separate book for recording instruments creating easements.

2. Easements may be created by instruments in writing for the absolute and unconditional sale or conveyance of lands, tenements and hereditaments. Under Section 2757 of the General Code, it is the county recorder's duty to record such instruments in the record of deeds."

In such opinion it was pointed out that the legislature has specifically provided what books the county recorder shall keep. The general section (section 2757, General Code), and other special statutes, such as sections 2757-1, 5694, 8314, 8340, 8538 and 13435-7, General Code, authorize the keeping of definite books by the county recorder in which to record the specific types of instruments therein described.

Section 2757, General Code, establishes deed, mortgage, plat and lease books. Section 2757-1, General Code, provides for a federal tax lien book. Section 5694, General Code, provides for a delinquent tax duplicate book; sections 8314 and 8340 provide for a mechanic's lien book; section 8538 provides for a separate record of powers of attorney authorizing the transfer of personal property; and section 13435-7, General Code, provides for an index book for criminal recognition liens.

Hence, since the legislature has not seen fit to authorize the establishment of a separate book in which to record the certificates described in section 5528-1, General Code, it remains to be determined in what book now authorized to be kept by the county recorder such certificates can be recorded.

Section 2757, General Code, reads as follows:

"The recorder shall keep four separate sets of records, namely: First, a record of deeds, in which shall be recorded all deeds, powers of attorney, and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements and hereditaments; Second, a record of mortgages, in which shall be recorded all mortgages, powers of attorney, *or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or incumbered in law*; Third, a record of plats, in which shall be recorded all plats and maps of town lots, and of the sub-divisions thereof, and of other divisions or surveys of lands; Fourth, a record of leases, in which shall be recorded all leases and powers of attorney for the execution of leases. All instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record." (Italics the writer's.)

It appears to me that the instrument set forth in section 5528-1, General Code, is an instrument of writing by which lands are incumbered in law, within the meaning of said section 2757, General Code. Section 5528-1 specifically states that the amount of the bond (incorporated in the certificate) "shall become a *lien* upon the property." If the certificates creating the lien are to be filed in the mortgage record book, it would seem logical that the certificates releasing the lien should be recorded by a county recorder in the same manner that releases of mortgages are recorded.

I am therefore of the opinion, in specific answer to your question, that the county recorder should record the certificate filed by the secretary of the Tax Commission, under the provisions of section 5528-1, General Code, in the mortgage record book. I am further of the opinion that the certificate releasing the lien created by the filing of the certificate by the secretary of the Tax Commission should be recorded in the same manner that releases of mortgages are recorded.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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1858.

OPINION NO. 69, JANUARY 26, 1933, REVERSED—CASE OF HEUCK,  
AUD., VS. STATE, EX REL. MACK, (NO. 24218, SUP. CT. OF OHIO).

COLUMBUS, OHIO, November 10, 1933.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Since the rendition of my opinion No. 69, addressed to you under date of January 26, 1933, the Supreme Court of Ohio has decided the case of *Robert Heuck, Auditor, etc., vs. State of Ohio, ex rel. Alfred Mack* (No. 24218 in the Supreme Court of Ohio). Such case held, as disclosed by the syllabus, as follows:

"1. Under Section 1-c, Article II of the Constitution of Ohio, providing that no law shall go into effect until ninety days after it shall have been filed in the office of the secretary of state, and further that when a petition, signed by six per centum of the electors, shall have been filed with the secretary of state within ninety days after any law shall have been so filed, such law shall be submitted to a referendum, the prescribed ninety day periods embrace ninety full days, and such time should be computed by excluding the date upon which the law was filed.

2. The so-called salary reduction act (114 Ohio Laws, pt. 2, 70), passed by the General Assembly September 30, 1932, and approved and filed in the office of the secretary of state on October 3, 1932, was subject to the filing of a referendum petition until at least the last moment of January 1, 1933, and, therefore, such law did not become effective until at least the first moment of January 2, 1933.

3. A judge of the court of common pleas, whose term of office began on January 1, 1933, was not affected by such salary reduction act,