

or photographic process is included within some one of these terms, the fee provided in section 2778 cannot be charged for records made by this process.

The photostatic process more nearly resembles printing than it does writing or typewriting. The first definition of "printing" contained in Webster's New International Dictionary is, "Act, art, or practice of impressing letters * * *." No doubt, when section 2778 was enacted, the ordinary meaning of printing involved the use of pressure. That pressure is not the only means of printing is shown by the second definition of the term found in Webster's:

"Act or art of producing a positive photographic picture from a negative by the action of sunlight or other actinic rays on sensitized paper."

Letters and documents now required to be reproduced in large numbers are copied by the photographic process. This process falls within the second definition of printing above quoted. The distinction between this method of reproduction and the photostatic process, which involves making a negative from a positive print, appears to me immaterial. Neither method requires the application of pressure.

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. This principle was applied in an opinion of this office, reported in Opinions of the Attorney General, 1913, Volume I, page 137, where a peddler's license law, in terms applicable only to one using a one-horse vehicle, two-horse vehicle, a boat, watercraft or a railroad car was deemed applicable to a peddler who used a motor truck.

In view of the foregoing, I am of the opinion that 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.

168.

CRIMINAL RECOGNIZANCE—NOTICE OF STATE'S LIEN NEED NOT BE COPIED IN A BOOK BUT MUST BE INDEXED—NO FEES CHARGEABLE FOR FILING SUCH LIENS.

SYLLABUS:

1. *The county recorder has no duty to actually copy or record in a book either the notices of lien prescribed by section 13435-5 or the notices of discharge of such lien prescribed by section 13435-6, the only requirement being that the recorder shall index all such notices in a book or record as they are filed in his office.*

2. *The legislature by its language has failed to provide a fee for filing, indexing and canceling such liens. Opinions of the Attorney General for 1929, Vol. II, page 1259, approved and followed.*

COLUMBUS, OHIO, February 24, 1933.

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

GENTLEMEN:—I have your letter of recent date which reads as follows:

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

Section 13435-5 of the General Code provides for a lien upon the property of a person signing a bond before a judge or a magistrate, and provides that the form prescribed in this section shall be filed with the recorder of the county in which the property is located. It further provides that from the time of filing and recording such notice, it shall constitute a notice to every one that the real property therein described has been pledged to the State of Ohio as security for the performance of the conditions of a criminal recognizance in the penal sum set forth in the said recognizance.

Section 13435-6 provides for the cancellation of such lien by the filing with the recorder of the information contained in the form prescribed by this section.

Section 13435-7 makes it the duty of the recorder of the county in which the property of the surety is located to properly keep a file of such notices of lien and discharge as hereinabove provided. The section further provides that such recorder shall receive from the county treasurer such fees as are provided by law for such recording and cancelling of such liens; to be paid on certificate of the clerk, approved by the Court.

Question 1: Is it the duty of the county recorder to record this notice in a book?

Question 2: Is it the duty of the county recorder to record the cancellation?

Question 3: What fees may be charged by the county recorder for filing or recording this notice?

Question 4: In case one of the sureties lives in an adjoining county, what county treasurer is to pay the fee—the one in which the recognizance is issued, or the one in which the surety resides?

In this connection, we might refer to sections 2757 and 2778 of the General Code.”

Section 13435-6, General Code, provides in part:

“Whenever, by the order of such court, a recognizance as provided in the two next preceding sections shall have been cancelled, discharged or set aside, or the cause in which such recognizance is taken shall have been dismissed or otherwise terminated, according to law, the clerk of such court shall forthwith file with the recorder of the county in which the real property is located, a notice of discharge in writing.”

Section 13435-7, General Code, reads:

“The recorder of the county in which the property of the surety is located, shall properly keep and file all such notices of lien and notices of discharge as hereinbefore provided, as may be filed with him, and shall

keep in addition thereto, a book or record in which he shall properly index such notice of liens and notice of discharges, as they may be filed with him. Such recorder shall receive from the county treasurer such fees as are provided by law for such recording, filing, indexing and canceling such liens to be paid on the certificate of the clerk approved by the court."

You first inquire, whether the recorder's duty to "file all notices of lien and notices of discharge," includes the duty to record such notices in a book. Section 13435-5, General Code, provides that a lien in favor of the state upon the real property of the sureties on a recognizance shall attach upon the execution of the recognizance with an affidavit of justification. That section also provides that "from the time of filing *and recording*" the notice of lien therein prescribed, the same shall constitute notice. Section 13435-7 allows 'such fees as are provided by law for *such recording*, filing, indexing and canceling such liens."

Taking the two latter provisions from their respective contexts and viewing them alone, it would seem that notices of lien should be "recorded" by the usual method, i. e., in a book. However it is well settled that a statute must be considered as a whole and that statutory provisions *in pari materia* must be read together in order to arrive at the legislative intent.

My predecessor answered your first and second questions in the negative in an opinion reported in Opinions of the Attorney General for 1929, vol. II, page 981. I concur in the conclusion and approve the following language of that opinion (pp. 983-984) as follows:

"The only purpose and effect of the filing of the lien notice by the court or clerk thereof, with the county recorder, is to notify the public of the existence of such lien and the amount thereof; and as to such lien notices, it is provided by Section 7 of said chapter that the county recorder shall file and keep the same. By Section 6 of said chapter, it is provided that from the time of the filing and 'recording' of such notice the same shall constitute notice to every one that the real property therein described has been pledged to the State of Ohio as security for the performance of the conditions of the recognizance in the penal sum set out in said recognizance and notice. In order to ascertain the meaning and significance of the term 'recording' as here used, it is necessary to have recourse to the language of Section 7 of said chapter, which provides that in addition to filing and keeping such lien notices filed with him, the county recorder shall keep a 'book' or 'record' in which he shall properly index such notices of liens and notices of discharges as they may be filed with him. It appears therefore that the 'recording' referred to in Section 6 of said chapter as a prerequisite of such lien notice as constructive notice to the public, has reference only to the index record of lien notices which the county recorder is required to make and keep.

The only other suggestion touching the question of the duty of the county recorder to record such notices of liens and notices of discharges is found in the provisions of Section 7 above quoted, that such recorder shall receive from the county treasurer such fees as are provided by law for such recording, filing, indexing and canceling such liens, to be paid on the certificate of the clerk approved by the court. I am inclined to the view, however, that the term 'recording' as here used, likewise has reference only to the indexing of such notices, which the county recorder

is required to do in the 'book' or 'record' referred to in the first sentence of said section. Supporting this conclusion, it may be observed that in view of the fact that the county recorder under the provisions of Section 7 above quoted, is required to keep such lien notices on file, no useful purpose would be served by likewise requiring him to copy the same in a book of record, but that the whole purpose of the statutory provision relating to the filing and keeping of such notices by the county recorder is served by requiring him to make and keep an index of such lien notices in a book or record whereby the public may be advised of the existence of the lien upon the particular real property described in the notice filed with and kept by the county recorder.

In consideration of the question presented in your communication, it is noted that Section 2757, General Code, now, as before the enactment of the statutory provisions above quoted, provides, among other things, that the county recorder shall keep a record of mortgages in which shall be recorded all mortgages, powers of attorneys or other instruments of writing, by which lands, tenements or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or encumbered in law. As to this, however, it is to be noted that it is not the filing of the lien notice which has the effect of encumbering the real property therein described; that, under the provisions of Section 5 of said chapter, is accomplished upon the execution of the recognizance and the affidavit of justification provided for in Section 4 of said chapter. Moreover, I am inclined to the view that the provisions of Section 2757, General Code, do not in themselves, operate so as to prescribe what instruments are entitled to record; but the purpose and intent of Section 2757, General Code, are to require the county recorder to provide record books for the purpose of recording such instruments as are entitled to record under other statutory provisions. In keeping with this view, it may be noted that Section 2757, General Code, contains the provision that 'all instruments *entitled to record* shall be recorded in a proper record in the order in which they are presented for record.'

It appears that the county recorder has no duty to actually copy or record in a book the notices of lien and notices of discharge, the only requirement being that he index such notices in a book or record as they are filed in his office.

Your next inquiry is what fees may be charged by the recorder for filing and indexing such notices. The last sentence of section 13435-7 reads:

"Such recorder shall receive from the county treasurer such fees as are provided by law for such recording, filing, indexing and canceling *such liens* to be paid on the certificate of the clerk approved by the court."
(Italics the writer's.)

The legislature has made no provision for fees in connection with the filing of the particular lien mentioned in the section. If the word "such" modifying the word "liens" in section 13435-7 could be construed to mean "like" or "similar," the section would provide for the same fees as provided by law for the indexing of similar liens.

My predecessor rejected this construction in an opinion reported in Opinions of the Attorney General for 1929, vol. II, page 1259, and held as is disclosed by the syllabus:

"The phrase 'such liens', as used in Section 13435-7, General Code, refers to the lien described with particularity in the former part of the section and therefore the Legislature, by its language employed, failed to provide a fee for recording, filing, indexing and canceling the same."

I concur in this conclusion and approve the following language found in the body of the opinion at page 1260:

"Without undertaking to discuss the many decisions upon the interpretation of the word 'such', it is believed sufficient to state that the natural import of the word when used in a statute is to limit the application to a person or thing previously mentioned, in the absence of something to show that it is not used for the purposes of comparison as to quality or character. *Integrity Mutual Insurance Company vs. Bois*, 127 N. E. 748. In other words, where the Legislature has with particularity set out a description of a definite or certain thing, such as the lien mentioned in the statute under consideration, and then refers to 'such lien,' it is believed that a fair interpretation is to limit the word 'such' to the particular lien mentioned. If the Legislature had intended that fees for similar or like services were to be charged, it could have very easily used appropriate language to convey such intent."

As pointed out by my predecessor, if the statute would authorize the recorder to collect the fee from the county treasurer, he would be required to return the fee to the treasurer by virtue of the provisions of section 2983. This section requires each county officer to pay into the county treasury all fees, costs and penalties collected by his office, and further expressly provides that no officer shall collect any fees from the county. It is apparent that the financial status of the county will not be affected by the failure to collect the fee.

Being of the opinion that no fee may be charged under section 13435-7, it becomes unnecessary to answer your fourth question.

Specifically referring to your inquiry, I am of the opinion that,

1. The county recorder has no duty to actually copy or record in a book either the notices of lien prescribed by section 13435-5 or the notices of discharge of such lien prescribed by section 13435-6, the only requirement being that the recorder shall index all such notices in a book or record as they are filed in his office.

2. The legislature by its language has failed to provide a fee for filing, indexing and canceling such liens.

Respectfully,

JOHN W. BRICKER,
Attorney General.

169.

PRIVATE COUNSEL—ENGAGED TO PROSECUTE A PROCEEDING TO REMOVE A TOWNSHIP TRUSTEE—NEITHER TOWNSHIP NOR COUNTY MAY PAY FOR SUCH SERVICES.

SYLLABUS:

1. *Where a proceeding was instituted under section 10-1, et seq., of the General Code, for the removal of a township trustee in which such officer was*