

29.

APPROVAL, NOTES OF AMERICAN RURAL SCHOOL DISTRICT, ALLEN COUNTY, OHIO—\$3,500.00.

COLUMBUS, OHIO, January 17, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

30.

RECORDS—COUNTY RECORDER NOT REQUIRED TO CERTIFY THAT A RECORD IS AUTHENTIC.

SYLLABUS:

1. *The provisions of section 2759 of the General Code, specifying how the record of deeds, mortgages and other instruments shall be made, are exclusive and compliance therewith makes the record complete.*

2. *Section 2759 of the General Code does not require a certificate signed by the recorder to the effect that the record is a correct copy of the original instrument.*

COLUMBUS, OHIO, January 18, 1933.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

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

“The following probably does not come within the province of your office, but is a matter in which I have instructed, and it applies especially to the office of Recorder in this County. An instrument, Deed, Mortgage, etc., is recorded, loose leaf records being employed. Completed, showing date and hour received and date of record, all typewritten, the records are signed with typewriter, as, for instance, ‘Sam Jones, Recorder’, and without any certificate that same is a true and correct copy of the original instrument.

My peculiarity is that I believe there should be a certificate by the Recorder that the record is a correct copy of the original instrument, and that certificate signed, in ink, by the Recorder, or his Deputy.

I do not, as above stated, know that this is a matter requiring an opinion from you, but often we are confronted with a statement that the record of the instrument is not a true copy, and, without the *signature* of the Recorder as to the genuineness of the record, whether such record really is sufficient, so I am asking that you advise.”

Section 2759 of the General Code specifies how the record shall be made by the recorder and is the only section of the statutes pertinent to your inquiry. It provides:

“The county recorder shall record in the proper record in a fair and legible handwriting, typewriting, or printing, all deeds, mortgages, or

other instruments of writing required by law to be recorded, presented to him for that purpose. They shall be recorded in regular succession according to the priority of presentation, entering the file number at the beginning of such record. *At the foot of the record of each instrument he shall record the date and precise time of day when it was presented for record.*" (Italics the writer's.)

From the facts presented by you, it appears that the recorder of your county has complied with all the requirements of this section for recording instruments. The section is silent upon the matter of a certificate signed by the recorder to the effect that the record is a correct copy of the original instrument.

The county recorder has only those duties prescribed by law. Because of the specific enumeration in the statute of the acts to be performed by the recorder in making the record, we cannot assume that the General Assembly intended him to perform other acts in order to make the record complete. I consider this a proper case for the application of the well known maxim of construction "expressio unius est exclusio alterius".

Even if the statute were ambiguous and could, without doing violence to its language, be construed as requiring the certificate which you mention, I should hesitate to so construe it because of the long continued practice of recorders in various counties in omitting to so certify. In *State, ex rel., vs. Brown*, 121 O. S. 73, at pages 75 and 76, the court said:

"It has been held in this state that 'administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and it is not to be disregarded and set aside unless judicial construction makes it imperative so to do.' *Industrial Commission vs. Brown*, 92 Ohio St., 309, 311, 110 N. E., 744, 745 (L. R. A., 1916B, 1277). See, also, 36 Cyc., 1140, and Ruling Case Law, 1043, and cases cited.

This is a well-recognized principle of statutory construction, and we deem it applicable in the present instance."

Specifically answering your question, I am of the opinion that the record of a deed, mortgage or other instrument is complete if it is made according to the specific provisions of section 2759, General Code, although it contains no certificate signed by the recorder to the effect that the record is a correct copy of the original instrument.

Respectfully,

JOHN W. BRICKER,
Attorney General.

31.

APPROVAL; NOTES OF McARTHUR-HUNTSVILLE RURAL SCHOOL DISTRICT, LOGAN COUNTY, OHIO—\$3,800.00.

COLUMBUS, OHIO, January 18, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.