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COUNTY RECORDER IS REQUIRED TO CHARGE THE FEES FOR THE RECORDING OF A TRANSCRIPT OF PROCEEDINGS AND OF PETITION AND PLAT—BOARD OF TOWNSHIP TRUSTEES DELIVERING SUCH IS RESPONSIBLE FOR PAYMENT OF FEES—§§317.32, R.C. 707.19, R.C.

## SYLLABUS:

Pursuant to the provisions of Section 317.32, Revised Code, the county recorder is required to charge the fees set forth therein for the recording of a transcript of proceedings and of petition and plat under Section 707.19, Revised Code, and the board of township trustees delivering such transcript, petition and plat to the county recorder is responsible for the payment of such fees.

Columbus, Ohio, May 31, 1960

Prosecuting Attorney, Medina County  
201 South Court Street, Medina, Ohio

Dear Sir:

Your letter requesting my opinion reads as follows:

“We have just recently had an entire Township incorporate, in our County, into a Village and the Trustees filed with the recorder the proceedings as required by Section 707.19 of the Revised Code.

“The recorder made a record of the proceedings and forwarded same to the Secretary of State, as provided for in the same statute and the Secretary of State asked for a \$5.00 filing fee. At that time a question arose as to whether or not the recorder was entitled to a fee for the filing of these papers and talking informally with the Bureau of Inspections and Audits it was their thought that a fee should be paid. We then billed the agent of the petitioners for such services who in turn presented this obligation to the Trustees.

“We would appreciate having your Informal Opinion as to the following questions:

1. Should the recorder charge the regular recording fee for recording a transcript required to be filed by the Board of Township Trustees under Section 707.19 of the Revised Code?

2. If the answer to 1 is in the affirmative, whose responsibility is it to pay such cost, the agent of the petitioners or the Township Trustees?"

For reasons that will appear later, the two questions posed in your letter will be considered in the reverse order.

Section 707.19, Revised Code, is a part of Chapter 707., Revised Code, which contains the statutes for the creation and incorporation of villages. The area involved is an entire township. The incorporation of territory of townships is provided for in Section 707.15 *et seq.*, Revised Code. The procedure for such incorporation in general terms is as follows :

An application, by petition, containing the signatures of not less than 10% of persons, seized of freehold estates and in no event less than thirty such persons, residing within the proposed corporate limits of the village, must be filed with the board of township trustees, together with the map of the territory involved and the data required by Section 707.04, Revised Code, requesting that an election concerning the proposed incorporation be held. After the board of township trustees has performed the steps as spelled out in Section 707.16, Revised Code, the board of elections is required to give ten days' notice of such election in a newspaper of general circulation in such township and to post notices in three or more public places within such township. The question is decided by a majority of ballots cast, and if the vote is in favor of the proposal for the incorporation of the township territory as a village, the board of township trustees must make a journal entry containing the results of the election and by order declare the immediate existence of the township territory as an incorporated village.

Section 707.19, Revised Code, containing the provisions in regard to further proceedings, reads as follows :

"The board of township trustees shall make a certified transcript of the journal entries of all its proceedings, and, a majority of the members of such board having signed the transcript, the board shall deliver it, with the original petition and plat, to the county recorder, who shall forthwith make a record of the petition, transcript, and plat or map, in the public book of records. Such recorder shall preserve in his office the original papers delivered to him by the board, and shall certify thereon that the transcribed petition and map are properly recorded. When the recorder has made such record, he shall certify and forward to the secretary of state a transcript thereof."

Since the facts stated in your letter indicate that the incorporation of the entire township here considered was completed at that point, Section 707.20 *et seq.*, Revised Code, dealing with the proceedings in case petition for an injunction is filed against such incorporation need not be discussed.

Turning now to above quoted Section 707.19, I note that the last sentence of such section states that when the county recorder has made the record of the certified transcript of the journal entries of the proceedings of the board of township trustees, he is required to forward to the secretary of state a certified transcript of such record. No provision is made for delivery of a certified transcript of the record, upon demand, to the agent of the petitioners for incorporation, as in the case pursuant to Section 707.10, Revised Code, when the proceedings for the incorporation of a territory other than that of one or more townships are instituted under the provisions of Sections 707.02 *et seq.*, Revised Code. It would appear that in the situation covered by Section 707.10, *supra*, such agent would have to pay a fee for such transcript since the recorder is not required to forward it to the agent except upon demand.

In the statement of facts here discussed no mention is made of a demand by the agent of the petitioners for a certified transcript of the record upon the recorder. In fact, it is arguable whether the recorder would have to honor such a demand if made since nothing is said about it in Section 707.09, *supra*. Moreover, such section does not contain even a mention of the agent for the petitioners while, on the other hand, it expressly states that the board of township trustees "shall deliver" the certified transcript of the proceedings to the county recorder. The conclusion is inescapable that the payment of the fee for the recording of the proceedings here discussed, if authorized by law, would be the responsibility of the board of township trustees.

The provisions regarding the instruments for the recording of which a county recorder is authorized to charge a fee are contained in Section 317.32, Revised Code, which reads in part:

"For his services, the county recorder shall charge and collect the following fees:

"(A) For recording, manually or through the use of a typewriter a mortgage, deed of conveyance, power of attorney,

or other instrument of writing, twenty-five cents for each hundred words actually written, typewritten, or printed on the records;

“\* \* \*

“(H) or recording any plat not exceeding six lines, one dollar, and for each additional line, ten cents;

“\* \* \*”

Looking now at Section 707.19, *supra*, I see that the board of township trustees was required to deliver to the county recorder for record the following instruments: (1) A certified transcript of journal entries in all its proceedings, and (2) the original petition and plat. Then I look at Section 317.32, *supra*, and see that division (A) contains the words “for recording \* \* \* other instruments in writing” and that division (H) contains the words “for recording of any plat \* \* \*.” The papers filed by the board of township trustees are clearly “instruments of writing”, and the plat which was filed with the petition, is expressly mentioned in Section 317.32, Division (H), *supra*. There is nothing in such or any other section of the Revised Code indicating in any manner whatsoever that a board of township trustees is exempt from its provisions under the circumstances here considered.

Pursuing the question further, I note that the only subdivision of the state which is relieved from paying the fees which certain county officers, county recorders among them, are authorized to collect and pay into the county treasury, is the county. The reason for such exemption is self-evident, as there would be no advantage for a county to pay such fees which must in any event be turned into the county treasury.

Section 325.31, Revised Code, expressly states: “None of such officers (named in Section 325.27, Revised Code), shall collect any fees from the county.” For a discussion of the question I refer you to Opinion No. 5136, Opinions of the Attorney General for 1936, Volume 1, page 121, where former Section 2983, General Code, substantially analogous with the present Section 325.31, Revised Code, was being construed.

Accordingly, it is my opinion and you are advised that pursuant to the provisions of Section 317.32, Revised Code, the county recorder is required to charge the fees set forth therein for the recording of a transcript of proceedings and of petition and plat under Section 707.19, Revised Code, and that the board of township trustees delivering such tran-

script, petition and plat to county recorder is responsible for the payment of such fees.

Respectfully,

MARK McELROY

Attorney General