

In the body of said opinion it was pointed out that while there were other fees provided for similar services, such as recording a notary public's commission, the same did not authorize a fee in connection with the registering of an optometrist's certificate.

The case of *Clark vs. Commissioners*, 58 O. S., 107, was cited in said opinion, in which it was held:

"To warrant the payment of fees or compensation to an officer, out of the county treasury, it must appear that such payment is authorized by statute."

Another angle that gives rise to some difficulty in connection with your inquiry is as to the purpose of requiring a fee under such circumstances. Section 2983 of the General Code 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 such officer shall collect any fees from the county. The Legislature in the enactment of the provision under consideration certainly did not intend that any fees to be charged were to be retained by the recorder. The fact that the same are authorized to be collected would seem to be inconsistent with the provisions of said section in so far as it authorizes the payment out of the county treasury. In any event, if the statute under consideration can be said to provide for a fee, which the recorder is authorized to collect from the county treasurer, it follows that he would have to again return it to the county treasury in pursuance of the provisions of Section 2983.

While the question as hereinbefore indicated is not free from doubt, I am of the opinion that in the language used the Legislature has failed to provide for the collection of fees from the county treasurer for the recording, filing, indexing and canceling of the lien provided for under Section 13435-5 of the General Code. As hereinbefore pointed out, in the final analysis the results are the same in so far as the financial status of the county is concerned, because if said fees were collected they would have to be returned to the county treasury.

Respectfully,
GILBERT BETTMAN,
Attorney General.

818.

DISAPPROVAL, DEED TO LAND OF JOURNEY AND ZEPHYR ANDERSON IN THE CITY OF COLUMBUS, FRANKLIN COUNTY.

COLUMBUS, OHIO, September 3, 1929.

HON. CARL E. STEEB, *Business Manager, Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval a deed form of a warranty deed to be executed by Journey Anderson, and Zephyr Anderson, his wife, conveying to the State of Ohio Lot No. 7 of Critchfield and Warden's subdivision of the south half of the north half of Lot No. 278 of R. P. Woodruff's Agricultural College Addition to the city of Columbus, Ohio, which lot is more fully described in Opinion No. 760 of this department directed to you under date of August 17, 1929.

An examination of the deed form submitted shows that the same when properly executed by said Journey Anderson and Zephyr Anderson will be sufficient on delivery thereof to convey to the State of Ohio a fee simple title in and to the above described

lot and premises, free and clear of the respective dower rights of said grantor, and free and clear of all encumbrances except the taxes thereon due and payable on and after December, 1929.

From the form of the warranty in this deed as above stated, I assume that the mortgage upon said lot and premises held by The Dollar Building and Loan Company and noted in Opinion No. 760 above referred to, is to be paid off by said grantors either out of the purchase money of the proposed sale to the State of Ohio or in some other way.

As above indicated, this deed has not yet been executed by said Journey Anderson and Zephyr Anderson, and before the purchase money for this property, or any part thereof, is paid over, this deed should be executed by said parties and the same approved by this department.

Said deed form is herewith forwarded to you.

Respectfully,
GILBERT BETTMAN,
Attorney General.

819.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF CHARLES L. TULLER IN THE CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, September 3, 1929.

HON. CARL E. STEEB, *Business Manager, Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval, an abstract of title, deed and encumbrance estimate relating to the proposed purchase of a certain lot and tract of land in the city of Columbus, Franklin County, Ohio, which is owned of record by one Charles L. Tuller, and which is more particularly described as being Lot No. 13 of Burton's subdivision of the north half of the south half of Lot 278 of R. P. Woodruff's Agricultural College Addition to the city of Columbus as said Lot 13 is numbered and delineated on the recorded plat thereof of record in Plat Book 3, page 350, Recorder's Office, Franklin County, Ohio.

An examination of the abstract submitted, which carries the title to this property from May 24, 1884, to August 23, 1929, shows that on April 1, 1915, and for some years prior thereto, one Ele W. Tuller and his wife Sarah E. Tuller, owned the above described property as tenants in common, each owning an undivided one-half interest therein. Said Ele W. Tuller died testate on April 1, 1915, and by his last will and testament he devised to his wife Sarah E. Tuller, as the residuary devisee of his estate, all his right, title and interest in and to said premises, and thereafter said Sarah E. Tuller owned said lot in its entirety by fee simple title.

Said Sarah E. Tuller died testate on August 10, 1923, seized of the property here under investigation. By Item 7 of her last will and testament said Sarah E. Tuller devised to her grandson Charles Tuller, who is one and the same person as the Charles L. Tuller above mentioned, Lot No. 6 of Barton's Addition to the city of Columbus, Franklin County, Ohio. There is nothing in the abstract to affirmatively show that at the time of the execution of the will of said Sarah E. Tuller, or at any other time, she or her deceased husband Ele W. Tuller, ever owned a lot of this number and description in Barton's Addition to the city of Columbus. On the other hand, there is nothing in said abstract which affirmatively shows that said Lot No. 13 of Barton's