

6379

1. DEED, MORTGAGE OR OTHER INSTRUMENT—EXECUTED CONFORMABLY TO PROVISIONS OF SECTION 5301.01 RC—DESCRIPTION OF PREMISES SUPPLIED BY PHOTOSTATIC OF PHOTOGRAPHIC COPY CLIPPED OR PINNED TO INSTRUMENT—ENTITLED TO BE RECORDED.
2. CLIPPING OR PINNING IN PROPER PLACE DESCRIPTION OF PREMISES—MORTGAGE, DEED OR OTHER INSTRUMENT DISPOSING OF REAL PROPERTY—MAY NOT BE GOOD PRACTICE—INSTRUMENT MAY NOT BE REJECTED WHEN PRESENTED FOR RECORDING.

SYLLABUS:

1. An original deed, mortgage or other instrument enumerated in Section 5301.01, Revised Code, which is executed conformably to the provisions of said section is entitled to record notwithstanding that the description of the premises affected is supplied by photostatic or photographic copy clipped or pinned to the instrument at the proper place.

2. While clipping or pinning in the proper place a description of premises to a mortgage, deed, or other instrument disposing of real property or an interest therein, may not be considered as good practice, such circumstance does not, per se, authorize the rejection of the instrument if and when presented for recording.

Columbus, Ohio, March 20, 1956

Hon. Everett Fahrenholz, Prosecuting Attorney
Preble County, Eaton, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“The County Recorder has requested that I secure an opinion from you on the following:

“There has been presented to the County Recorder an original mortgage; the description of premises conveyed is not typed in as is customary but a photostatic copy of that description is clipped or pinned to the mortgage at the proper place.

“Is such mortgage one of writing as required by 5301.25, and entitled to record?

“Your attention is called to previous 1942 opinion 5369.”

In your inquiry you have referred me to Opinion No. 5369, Opinions of the Attorney General for 1942, page 559. Reference to that opinion discloses that the question presented to my predecessor was whether a photostatic or photographic copy of a deed was entitled to record in the deed records of the county. This question was answered in the negative. While I am in agreement with the conclusions reached in that opinion I cannot express an unreserved concordance with all the reasoning upon which that conclusion was based.

The writer of Opinion No. 5369, *supra*, was confronted primarily with a comparison of two statutes, Sections 8510 and 8543, General Code, which respectively provided as follows:

Section 8510

“A deed, mortgage, or lease of any estate or interest in real property, must be signed by the grantor, mortgagor, or lessor, and such signing be acknowledged by the grantor, mortgagor, or lessor in the presence of two witnesses, who shall attest the signing and subscribe their names to the attestation. Such signing also must be acknowledged by the grantor, mortgagor, or lessor before a judge of a court of record in this state, or a clerk thereof, a county auditor, county surveyor, notary public, mayor or justice of the peace, who shall certify the acknowledgment on the same sheet on which the instrument is written or printed, and subscribe his name thereto.”

Section 8543

“All other deeds and instruments of writing for the conveyance or incumbrance of lands, tenements, or hereditaments, executed agreeably to the provisions of this chapter, shall be recorded in the office of the recorder of the county in which the premises are situated, and until so recorded or filed for record, they shall be deemed fraudulent, so far as relates to a subsequent bona fide purchaser having, at the time of purchase, no knowledge of the existence of such former deed or instrument.”

Section 8510, *supra*, required that the documents mentioned therein be signed by the grantor and subscribed by attesting witnesses as well as by the officer taking the acknowledgment. Section 8543, *supra*, required that the instrument offered for record “* * * be executed agreeably to the provisions * * *” of that chapter. It is manifest, therefore, that a photographic or photostatic copy of an instrument could not meet this requirement, since the copy itself had not been signed, subscribed or

acknowledged as provided by statute. While the writer of Opinion No. 5369, *supra*, appeared to recognize this fact, he devoted the major portion of his exposition to determining that the photostatic copy was not a "writing." It is with this conclusion that I cannot agree.

It is noted that Sections 5301.01 and 5301.25, Revised Code, the present statutory successors to General Code Sections 8510 and 8543, respectively, are somewhat changed in phraseology but in so far as the instant question is concerned they are substantially the same. In such context I am of the persuasion that the terms "writing," "in writing," or "of writing," include printing, engraving, lithographing, photostating, photographing, mimeographing or any other mode of representing or reproducing words or letters.

I am, moreover, conscious of the functions of a county recorder as a ministerial rather than a judicial officer. See *State v. Guilbert*, 56 Ohio St., 575, and opinion No. 4531, Opinions of the Attorney General for 1932, page 906. While there may be instances where an instrument is clearly not entitled to record, nevertheless, where recordability is the subject of mere doubt, the doubt should be resolved by complying with the ministerial duties imposed by statute. The question of the legal efficacy of the instrument as constructive notice may be the subject of subsequent determination by the appropriate court faced with the question.

It is noted that you have mentioned that the photostatic copy of the description was clipped or pinned to this instrument at the proper place. I do not deem this circumstance as controlling on the issue of whether or not the instrument is entitled to record. While such a method of preparing a deed can hardly be considered good practice, since the possibilities of fraud, alteration, or substitution of the description subsequent to delivery are immeasurably increased, the same possibilities exist, to some degree, with respect to any instrument.

Accordingly, it is my opinion and you are advised that:

1. An original deed, mortgage or other instrument enumerated in Section 5301.01, Revised Code, which is executed conformably to the provisions of said section is entitled to record notwithstanding that the description of the premises affected is supplied by photostatic or photographic copy clipped or pinned to the instrument at the proper place.

2. While clipping or pinning in the proper place a description of premises to a mortgage, deed, or other instrument disposing of real property or an interest therein, may not be considered as good practice, such circumstance does not, per se, authorize the rejection of the instrument if and when presented for recording.

Respectfully,

C. WILLIAM O'NEILL

Attorney General