

day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5650.

COUNTY RECORDS—DUTY TO RECORD LEASE CONTAINING
MAP OR PLAT WHEN—FEES FOR RECORDING SUCH.

SYLLABUS:

1. *A county recorder is unauthorized to record a lease which contains a map or a plat describing the property in such lease by merely pasting the plat on the record.*

2. *It is the duty of the county recorder to charge the fees prescribed in Section 2779, General Code, for recording a map or plat describing the property in a lease.*

COLUMBUS, OHIO, May 29, 1936.

HON. PAUL SPRIGGS, *Prosecuting Attorney, Paulding, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion which reads as follows:

“On numerous instances various parties have presented the Recorder oil and gas leases, containing plats showing the location of gas lines through the real estate described in said leases.

These parties have requested the Recorder to paste these plats on the record.

(1) Is the Recorder authorized by law to paste such plats on the record?

(2) In the event the plats are transcribed on the records in the Recorder’s Office, what fee should the Recorder charge for making the record of each plat?”

From your inquiry, I assume that the map or plat is a part of the lease and is necessary to show the proper location of the property in question. In other words, the lease in addition to being in the usual form of such conveyance, has a map or plat in the same instrument. Section 2757, General Code, provides that the recorder shall keep certain books and enumerates what should be recorded in these books. This section reads as follows:

“The recorder shall keep four separate sets of records, namely: First, a record of deeds, in which shall be recorded all deeds, powers of attorney, and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements and hereditaments; Second, a record of mortgages, in which shall be recorded all mortgages, powers of attorney, or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged, or otherwise conditionally sold, conveyed, affected or incumbered in law; Third, a record of plats, in which shall be recorded all plats and maps of town lots, and of the subdivisions thereof, and of other divisions or surveys or lands; Fourth, a record of leases, in which shall be recorded all leases and powers of attorney for the execution of leases. All instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record.”

A similar question to the one presented by you was passed upon in an opinion to be found in the Opinions of the Attorney General for 1934, Volume 1, page 728. The syllabus of that opinion reads as follows:

“Where a deed contains a map or plat of the territory being deeded, and such deed and map or plat are being recorded by photostatic or photographic process, it is the duty of the county recorder to charge a fee of twelve cents for each hundred words photographed or photostated upon the records, and in addition thereto the fee prescribed in section 2779, General Code, for recording a plat or map by the photostatic or photographic process.”

The question propounded in that opinion read in part as follows:

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In case a deed contains a map or plat of the territory being deeded, and such deed and map or plat are being recorded by photostatic or photographic process, is the recorder required to charge a fee of twelve cents for each hundred words photographed or photostated upon the records, and in addition thereto the fee prescribed in Section 2779 for recording a plat or map by the photostatic or photographic process?”

From the opinion at Page 729 I quote the following passage:

“However, I assume that your question relates principally to the authority of the county recorder to charge fees for recording an instrument, which, in addition to being in the usual form of a conveyance, has a map or a plat in the same instrument. Obviously, the ordinary mortgage, deed of conveyance, or other instrument of writing is subject to the recording fees chargeable under the provisions of section 2778. For recording a plat or map, the fees provided in section 2779 must be charged. Sections 2778 and 2779 were passed at the same time and are in *pari materia*. Obviously, the legislature intended that the county recorder should be compensated for his services rendered in the recording of various instruments. It would appear reasonable that, under the circumstances presented in your inquiry, the legislature intended a fee of twelve cents for each hundred words to be charged for recording the conveyance itself, and if the deed contains a plat or map, the fees prescribed in section 2779 should be charged for recording the map or plat. * * *”

In that opinion it was assumed that there was authority to record the map or plat if the same were an integral part of the deed. The opinion dealt mainly with the question of whether or not the plat or map could be recorded by the photostatic or photographic process and if so what fees the recorder should charge. While that opinion related to deeds, rather than leases, this difference is immaterial. However, in the present case, you ask whether or not the recorder may paste the plat on the record. In this connection I call your attention to an opinion to be found in Opinions of the Attorney General for 1926, Page 450. The syllabus of that opinion reads as follows:

“The mere pasting by the margin thereof of a plat in a deed book in a county recorder’s office is not a proper recording of such plat as required by section 2759 G. C.”

After quoting the provisions of Section 2759, General Code, relative to the method of recording instruments by the county recorder, the then Attorney General stated:

“The language of the above section ‘record in a proper record’ by writing, typewriting or printing, certainly requires a more definite operation than merely pasting a plat in a deed book by the margin thereof. To record a plat by handwriting or otherwise is to inscribe an authenticated tracing thereof.” (Standard Dictionary.)

Following the above 1926 opinion, it would seem that your first question should be answered in the negative.

Your second question with reference to what fees the recorder should charge for recording such plat is answered by the above 1934 opinion. In other words, the recorder should charge the fees provided in section 2779, General Code. This section reads as follows:

“For recording assignment or satisfaction of mortgage or discharge of a soldier, twenty-five cents; for each search of the record, without copy, fifteen cents; for recording any plat not exceeding six lines, one dollar; and for each additional line, ten cents.”

In view of the above, it is my opinion, in specific answer to your inquiries:

1. A county recorder is unauthorized to record a lease which contains a map or a plat describing the property in such lease by merely pasting the plat on the record.

2. It is the duty of the county recorder to charge the fees prescribed in Section 2779, General Code, for recording a map or plat describing the property in a lease.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5651.

TRANSFER OF FUNDS—CONSERVATION FUNDS SPENT FOR
PARKS AND LAKES MAY NOT BE RECOVERED FROM
GENERAL FUND.

SYLLABUS:

1. *In the absence of legislative authority therefor, moneys may not be transferred or appropriated from the general fund of the state to the uses and purposes fund of the Division of Conservation to replace moneys which were expended during the life of House Bill 531 of the 91st General Assembly pursuant to appropriations therein contained for the Bureau of Lakes and Parks from the uses and purposes fund of such division.*

2. *Obligations of the Bureau of Lakes and Parks of the Division of Conservation which were duly contracted during the life of such House Bill 531 are payable from the uses and purposes fund of such division after the effective date of the repeal of the appropriations contained in*