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REGARDING AUTHORITY OF COUNTY RECORDER TO ENTER INTO AN AGREEMENT WITH A PRIVATE CONCERN IN WHICH SUCH CONCERN WOULD MAKE ENLARGED COPIES OF MICROFILM RECORDS. §§9.01, 317.33, R.C. OAG No. 6935.

SYLLABUS :

While pursuant to Section 9.01, Revised Code, a county recorder is authorized to rent equipment for the microfilming of records, such recorder has no authority to enter into an agreement with a private concern, pursuant to which agreement such concern would make enlarged copies of microfilm records furnished by the recorder, such enlarged copies to be used by the recorder as public reference records.

Columbus, Ohio, May 25, 1960

Prosecuting Attorney, Montgomery County
Court House Annex, Dayton, Ohio

Dear Sir :

Your request for my opinion, to which a letter of the recorder of Montgomery County is attached, is concerned with the following question :

Does a county recorder have authority to enter into an agreement with a private concern, pursuant to which agreement such concern would make enlargements from the microfilm sent them by the county recorder's office and said enlargements from the microfilm would be returned as a permanent record in the bound volumes of the county recorder's office?

Section 317.13, Revised Code, to which you refer reads in pertinent part:

“The county recorder shall record in the proper record, in legible handwriting, typewriting, or printing, or by any authorized photographic process, all deeds, mortgages, plats, or other instruments of writing required or authorized to be recorded, presented to him for that purpose. * * *”

Also to be considered in connection with the instant question is Section 9.01, Revised Code, which reads:

“When any officer, office, court, commission, board, institution, department, agent, or employee of the state, or of a county, or any political subdivision, who is charged with the duty or authorized or required by law to record, preserve, keep, maintain, or file any record, document, plat, court file, paper, or instrument in writing, or to make or furnish copies of any thereof, deems it necessary or advisable, when recording any such document, plat, court file, paper, or instrument in writing, or when making a copy or reproduction of any thereof or of any such record, for the purpose of recording or copying, preserving, and protecting the same, reducing space required for storage, or any similar purpose, to do so by means of any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process, which correctly and accurately copies or reproduces, or provides a medium of copying or reproducing, the original record, document, plat, court file, paper, or instrument in writing, such use of any such photographic processes, for any such purpose, is hereby authorized. Any such records, copies, or reproductions may be made in duplicate, and such duplicates shall be stored in different buildings. The film or paper used for this process shall be of acetate base and shall comply with the minimum standards of quality approved for permanent photographic records by the national bureau of standards.

“Any such officer, office, court, commission, board, institution, department, agent, or employee of the state, a county, or any political subdivision may purchase or rent required equipment for any such photographic process. When so recorded, or copied or reproduced to reduce space required for storage or filing of such records, said photographs, microphotographs, microfilms, or films, or prints made therefrom, when properly identified by the officer by whom or under whose supervision the same were made, or who has the custody thereof, have the same effect at law as the original record or of a record made by any other legally authorized means, and may be offered in like manner and shall be received in evidence in any court where such original record, or record made by other legally authorized means, could have been so introduced and received. Certified or

authenticated copies or prints of such photographs, microphotographs, films,, or microfilms shall be admitted in evidence equally with the original photographs, microphotographs, films, or microfilms.

“Such photographs, microphotographs, microfilms, or films shall be placed and kept in conveniently accessible, fireproof, and insulated files, cabinets, or containers, and provisions shall be made for preserving, safekeeping, using, examining, exhibiting, projecting, and enlarging the same whenever requested, during office hours.”

In Opinion No. 6935, Opinions of the Attorney General for 1956, which is mentioned in your letter, one of my predecessors held:

“A county recorder has no authority to enter into an agreement with a private concern, pursuant to which agreement such concern would photostat and return to the recorder instruments which had been presented for record.”

The question arises as to whether the provision of Section 9.01, *supra*, allowing the *rental* of equipment for photographic process would authorize a contract such as in the instant situation. This provision was considered in Opinion 6935, *supra*, it being stated at page 616:

“In these circumstances I feel constrained to hold that a county recorder who elects to exercise his discretionary statutory authority to photostat instruments for record, must do so as an incident of the operation of his own office by the use of equipment purchased or rented for that purpose, rather than by contracting with a private person or firm to accomplish such function for him and in his stead. This view is supported also by the following language in Section 317.12, Revised Code:

“Upon the presentation of a deed or other instrument of writing for record, the county recorder shall indorse thereon the date, the precise time of its presentation, and a file number. * * * Until recorded, each instrument shall be kept on file in the same numerical order, for easy reference. * * *

“This language plainly suggests that during the interval from the ‘precise time’ an instrument is presented to the time of being recorded, such instrument is to be kept *in* the recorder’s office, available ‘for easy reference.’ This would scarcely be possible under the proposed plan you describe.”

While in the present situation the original records would not leave the recorder’s office, I am of the opinion that the statutory provision authorizes the recorder to microfilm records with rental equipment but does not authorize him to contract with a private person or firm to accomplish such function for him and in his stead.

In the absence of any specific or implied authority, therefore, it must be concluded that the county recorder is without authority to enter into a contract such as here concerned. 14 Ohio Jurisprudence (2d), page 238.

Answering your specific question, therefore, it is my opinion and you are advised that, while pursuant to Section 9.01, Revised Code, a county recorder is authorized to rent equipment for the microfilming of records, such recorder has no authority to enter into an agreement with a private concern, pursuant to which agreement such concern would make enlarged copies of microfilm records furnished by the recorder, such enlarged copies to be used by the recorder as public reference records.

Respectfully,

MARK MCELROY

Attorney General