

the Sharp Realty Company, as lessor, and the State of Ohio, by Richard T. Wisda, Director, Department of Public Works, acting for the Department of Public Welfare, Ohio Commission for the Blind, as lessee, covering floor space located on the fourth floor of the South Stoneman Building in the city of Columbus, Ohio. The proposed lease is for a term of six months, beginning the first day of July, 1929, and ending on the thirty-first day of December, 1929, and calls for an expenditure of one thousand and fifty dollars (\$1,050.00).

You have submitted an encumbrance estimate, No. 5279, bearing the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated sufficient to pay the above item.

Upon examination of said lease and the other paper submitted therewith, I am of the opinion that the same are in proper legal form and therefore approve the same.

I am returning herewith the lease and encumbrance estimate submitted in this connection.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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647.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN  
GALLIA COUNTY.

COLUMBUS, OHIO, July 23, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

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648.

CRIMINAL RECOGNIZANCE—NOTICE OF STATE'S PROPERTY LIEN  
FILED WITH COUNTY RECORDER—REQUIRED TO BE INDEXED.

**SYLLABUS:**

*The notice of the lien arising in favor of the State of Ohio with respect to a recognizance in an amount exceeding the sum of two hundred dollars and the affidavit of justification supporting the same provided for in Sections 4 and 5 of Chapter 14 of Amended Senate Bill No. 8, enacted by the 88th General Assembly, which notice is to be filed with the county recorder by the court taking such recognizance or the clerk thereof, is not required to be copied by the county recorder in the book or record provided for in Section 7 of said chapter and act; but the county recorder is only*

*required to file and keep such lien notice and index the same in the book or record provided therefor.*

COLUMBUS, OHIO, July 23, 1929.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This is to acknowledge receipt of your recent communication, which reads as follows:

"We are enclosing herewith copy of Amended Senate Bill No. 8, an act to revise and codify the Code of Criminal Procedure of Ohio, etc., and call your attention to Sections 5 and 7 on pages 23 and 24 of said act. The former section provides that the clerk of the court or the magistrate, as the case may be, shall forthwith, upon the filing with him of such recognizance, file with the recorder of the county in which such real property is located, a notice or lien, in writing, in form as set out in said section. It further provides that from the time of the filing and recording of such notice the same shall constitute notice to every one that the real property therein described has been pledged to the State of Ohio as security for the performance of the conditions of a criminal recognizance.

Section 7 provides that the recorder of the county in which the property of the surety is located, shall properly keep and file all such notices of lien and notices of discharge as hereinbefore provided, as may be filed with him, and shall keep in addition thereto a book or record in which he shall properly index such notices of liens and notice of discharges, as they may be filed with him.

*Question:* Are the notices of liens and notices of discharges to be actually copied in the book or record referred to or does such record mean merely an index of such notices of liens and notices of discharges, which are filed in his office?"

The statutory provisions referred to in your communication are a part of Chapter 14 of an act to revise and codify the Code of Criminal Procedure of Ohio, passed April 1, 1929, which chapter contains the provisions of said act relating to the subject of "Bail." Section 4 of said chapter provides that when a recognizance is offered, the sureties on which qualify as real property owners, the judge or magistrate shall require such surety or sureties to pledge to the State of Ohio real property owned by the surety or sureties, and located in this state; and that when such pledge of real property has been given by any such proposed surety, he shall execute the usual form of recognizance, and in addition thereto there shall be filed an affidavit of justification of suretyship to be attached to said recognizance as a part thereof, which affidavit is to be in the form prescribed by said section.

Section 5 of the chapter of the act here under consideration, reads as follows:

"Upon the execution of any recognizance in an amount in excess of two hundred dollars in the usual form, and an affidavit of justification as set forth in the next preceding section, there shall attach to the real property described in said affidavit of justification as hereinafter provided, a lien in favor of the State of Ohio in the penal sum of the recognizance, which lien shall remain in full force and effect during such time as such recognizance remains effective, or until further order of the court. Upon the acceptance by said judge or magistrate of such recognizance, containing such affidavit of justification, the said recognizance shall be immediately filed with the clerk of said court if there be a clerk, or with the magistrate. The clerk of the court or the magistrate, as the case may be, shall forthwith, upon the filing with him of such

recognizance, file with the recorder of the county in which such real property is located, a notice or lien in writing in substance as follows: 'To whom it may concern: Take notice that the hereinafter described real property, located in the county of \_\_\_\_\_ has been pledged for the sum of \_\_\_\_\_ dollars, to the State of Ohio, by \_\_\_\_\_ surety upon the recognizance of \_\_\_\_\_ in a certain cause pending in the \_\_\_\_\_ court of the county (or city) of \_\_\_\_\_, to-wit: the State of Ohio, plaintiff, versus \_\_\_\_\_, defendant, known and identified in such court as cause No. \_\_\_\_\_.

Description of real estate: \_\_\_\_\_  
 Clerk of the court for the county of \_\_\_\_\_ or \_\_\_\_\_  
 Magistrate. Dated \_\_\_\_\_.'

From the time of the filing and recording of such notice the same shall constitute notice to every one that the real property therein described has been pledged to the State of Ohio as security for the performance of the conditions of a criminal recognizance in the penal sum set forth in said recognizance and notice. Such lien shall not affect the validity of prior liens on said property."

By Section 6 of said chapter it is provided that whenever, by the order of the court, a recognizance as provided in the next two preceding sections shall have been canceled, discharged or set aside, or the cause in which such recognizance is taken shall have been dismissed or otherwise terminated, according to law, the clerk of such court shall forthwith file with the recorder of the county in which the real property is located, a notice of discharge in writing, in the form prescribed by said section.

Section 7 of said chapter provides as follows:

"The recorder of the county in which the property of the surety is located, shall properly keep and file all such notices of lien and notices of discharge as hereinbefore provided, as may be filed with him, and shall keep in addition thereto, a book or record in which he shall properly index such notice of liens and notice of discharges, as they may be filed with him. Such recorder shall receive from the county treasurer such fees as are provided by law for such recording, filing, indexing and canceling such liens to be paid on the certificate of the clerk approved by the court."

From a consideration of the statutory provisions above noted, it appears that the lien of the state attaches only with respect to recognizances in amounts exceeding two hundred dollars, but that as to such recognizances the lien attaches upon the execution of the recognizance and the affidavit of justification provided for by section 4 of Chapter 14 of the act above referred to.

The only purpose and effect of the filing of the lien notice by the court or clerk thereof, with the county recorder, is to notify the public of the existence of such lien and the amount thereof; and as to such lien notices, it is provided by Section 7 of said chapter that the county recorder shall file and keep the same. By Section 6 of said chapter, it is provided that from the time of the filing and "recording" of such lien notice the same shall constitute notice to every one that the real property therein described has been pledged to the State of Ohio as security for the performance of the conditions of the recognizance in the penal sum set out in said recognizance and notice. In order to ascertain the meaning and significance of the term "recording" as here used, it is necessary to have recourse to the language of Section 7 of said chapter, which provides that in addition to filing and keeping such lien notices filed with him, the county recorder shall keep a "book" or "record" in which he shall properly *index* such notices of liens and notices of discharges as they may be filed

with him. It appears therefore that the "recording" referred to in Section 6 of said chapter as a prerequisite of such lien notice as constructive notice to the public, has reference only to the index record of lien notices which the county recorder is required to make and keep.

The only other suggestion touching the question of the duty of the county recorder to record such notices of liens and notices of discharges is found in the provisions of Section 7 above quoted, that such recorder shall receive from the county treasurer such fees as are provided by law for such recording, filing, indexing and canceling such liens, to be paid on the certificate of the clerk approved by the court. I am inclined to the view, however, that the term "recording" as here used, likewise has reference only to the indexing of such notices, which the county recorder is required to do in the "book" or "record" referred to in the first sentence of said section. Supporting this conclusion, it may be observed that in view of the fact that the county recorder under the provisions of Section 7 above quoted, is required to keep such lien notices on file, no useful purpose would be served by likewise requiring him to copy the same in a book of record, but that the whole purpose of the statutory provision relating to the filing and keeping of such notices by the county recorder is served by requiring him to make and keep an index of such lien notices in a book or record whereby the public may be advised of the existence of the lien upon the particular real property described in the notice filed with and kept by the county recorder.

In the consideration of the question presented in your communication, it is noted that Section 2757, General Code, now, as before the enactment of the statutory provisions above quoted, provides, among other things, that the county recorder shall keep "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 other wise conditionally sold, conveyed, affected, or encumbered in law. As to this, however, it is to be noted that it is not the filing of the lien notice which has the effect of encumbering the real property therein described; that, under the provisions of Section 5 of said chapter, is accomplished upon the execution of the recognizance and the affidavit of justification provided for in Section 4 of said chapter. Moreover, I am inclined to the view that the provisions of Section 2757, General Code, do not, in themselves, operate so as to prescribe what instruments are entitled to record; but the purpose and intent of Section 2757, General Code, are to require the county recorder to provide record books for the purpose of recording such instruments as are entitled to record under other statutory provisions. In keeping with this view, it may be noted that Section 2757, General Code, contains the provision that "all instruments *entitled to record* shall be recorded in a proper record in the order in which they are presented for record."

The general statutory provisions relating to the recording of instruments affecting real property are Sections 8542 and 8543, General Code, which are a part of Chapter 1, Title VIII of the General Code, relating to the conveyance and encumbrance of real property.

Section 8542, General Code, provides that mortgages executed according to the provisions of said chapter shall be recorded in the office of the recorder of the county in which the mortgaged premises are situated and that they shall take effect from the time they are delivered to the recorder of the proper county for record.

Section 8543 provides that "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."

It will be seen, therefore, that there is nothing in the provisions of Section 2757, General Code, or those of Section 8543, General Code, providing for the recording of instruments of writing for the incumbrance of lands, tenements or hereditaments,

which are in any way opposed to the view above indicated that the book or record referred to in Section 7 of Chapter XIV of the act of April 1, 1929, is to be used only as a book in which the recorder is required to make an index of the notices of liens and notices of discharges provided for in Sections 5 and 6 of said chapter, and that the county recorder is not required to copy or record such notices in said book or record.

By way of specific answer to your question, therefore, I am of the opinion that the notices of liens and notices of discharges from such liens, provided for by Sections 5 and 6 of the chapter and act above referred to, are not required to be actually copied or recorded in the book or record referred to in Section 7, above quoted, but that the only requirement is that such notices of liens and discharges shall be indexed by the recorder in such book or record as the same are filed in his office.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

649.

APPROVAL, SIX GAME REFUGE LEASES—DISAPPROVAL, TWO GAME REFUGE LEASES.

COLUMBUS, OHIO, July 23, 1929.

HON. J. W. THOMPSON, *Division of Fish and Game, Columbus, Ohio.*

DEAR SIR:—You have submitted the following leases relating to state game refuges, as follows:

<i>No.</i>	<i>Lessor</i>	<i>Acres</i>
597	Isabel E., Wm. S. and Anna B. Wallace, Logan County, McArthur Township .....	204.54
598	John F. Trout, Logan County, Lake Township.....	100.09
599	Effie M. Smith, Logan County, Harrison Township.....	167.68
600	John F. Trout, Logan County, Harrison Township.....	68
601	J. G. Harris, Ex estate of Mary M. Harris, Logan County, Harrison Township .....	145.08
602	J. B. Forsythe and Henrietta, his wife, Logan County, Harrison and Lake Townships.....	47.73
603	Madison Kemper, Logan County, Lake Township.....	150
604	C. F., M. B., and Grace Bowersock, Logan County, Harrison and McArthur Townships .....	144.57

I have found all of said leases to be in proper legal form with the exception of the lease of C. F., M. B. and Grace Bowersock, and the lease of J. G. Harris, executor of the estate of Mary M. Harris.

In the Bowersock lease, there are no individual signatures of the three parties who presumably are the grantors. It being essential that the individual owners of the property should sign their names individually to said lease, it is obvious that the same cannot be approved in its present form.

In reference to the Harris lease which is executed by J. G. Harris as executor of the estate of Mary M. Harris, there is no authority accompanying said lease which discloses the power of such executor to execute the lease. Ordinarily executors