

429.

APPROVAL, NOTES OF SALTICK TOWNSHIP RURAL SCHOOL DISTRICT, PERRY COUNTY, OHIO—\$957.00.

COLUMBUS, OHIO, March 31, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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430.

APPROVAL, NOTES OF VIRGINIA TOWNSHIP SCHOOL DISTRICT, COSHOCTON COUNTY, OHIO—\$4,095.00.

COLUMBUS, OHIO, March 31, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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431.

CHATTEL MORTGAGE—COUNTY RECORDER NOT REQUIRED TO SEARCH FOR PRIOR LIENS WHEN MORTGAGE DEPOSITED.

**SYLLABUS:**

*The mortgagee of a chattel mortgage cannot require the county recorder to search the chattel mortgage files and make a statement as to the existence of prior liens upon property covered by a chattel mortgage deposited for filing, no such duty having been imposed upon the recorder by statute.*

COLUMBUS, OHIO, April 1, 1933.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—I have your letter of recent date which reads as follows:

“Certain mortgagees filing chattel mortgages with the Recorder of Seneca County have requested that a search of the chattel mortgage records be made by the recorder before filing the mortgage, to ascertain whether or not there are any liens upon the mortgaged property. They have requested that the result of the search be noted by the recorder upon a form prepared for that purpose. If prior mortgages have been filed, the items of the names of the mortgagees, the date of filing, and the property mortgaged are to be shown upon the form supplied, and if there are no prior liens, the recorder has been requested to write the word ‘none’ upon the form.

Our county recorder has inquired as to whether or not a recorder may be compelled to furnish such information, and if so, whether or not she is liable for any mistake or error which might occur in such a report.

I find under Section 2779 of the Ohio General Code that a recorder shall charge the sum of 15c for each search of record without copy, but I am undecided as to whether or not the recorder must make a written report, which would be binding upon him and his sureties.

The recorder is willing to make a restricted report to the effect that as far as search has been made, nothing was found, but does not believe that the recorder should be compelled to make an absolute statement that no mortgages were found, the reason being that the misspelling of a name or a different spelling might be confusing.

I would appreciate very much your opinion upon this matter at your earliest convenience."

Public officers have only those powers and duties expressly imposed by statute, together with such implied powers as are necessary to carry into effect the express powers and duties granted. *State ex rel. vs. State Medical Board*, 107 O. S. 20; *Schwing vs. McClure*, 120 O. S. 335. There is no statute in this state which in terms imposes upon a county recorder the duty to search the chattel mortgage files and records to ascertain if there are prior liens upon the property covered by a chattel mortgage presented for filing.

In your letter you refer to section 2779 of the General Code which prescribes a fee of fifteen cents "for each search of the record, without copy." A former opinion of this office, reported in Opinions of the Attorney General for 1918, volume II, page 1161, contains this language:

"You ask me to advise you as to the meaning of the phrase 'for each search of the record, without copy.' In my opinion, this phrase contemplates a search of one of the records mentioned in section 2757 of the General Code."

Section 2757 mentions only the deed, mortgage, plat and lease records, all of which concern real property. It thus appears that section 2779 has no application to chattel mortgages. The statutory provisions relating to chattel mortgages are contained in another title of the code. Since section 2779 is inapplicable to chattel mortgages, it is unnecessary to discuss the meaning of the provision therein in question. However, I may say that in my opinion this provision does not require the recorder to search through the various records in his office affecting real property and make a statement as to the status of the title to real property covered by an instrument deposited for record.

Section 8572, General Code, prescribes the recorder's fees in respect to chattel mortgages. The only portion of this section even remotely bearing upon your question is the provision which entitles the officer to a fee of six cents "for searching each paper." Obviously, this provision does not require the recorder to conduct a search of the chattel mortgages on file in his office when a new mortgage is deposited for filing, and make a statement as to the existence of prior liens upon the property covered thereby. Since in my opinion neither this nor any other section of the statutes imposes such a duty, you are advised that the county recorder is not under a duty to make such search and render such statement.

Respectfully,  
JOHN W. BRICKER,  
Attorney General.