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THE "NOTICE INDEX" NOT APPLICABLE TO 5309., R. C. PERTAINING TO REGISTRATION OF LAND TITLES; AND ALL COUNTY RECORDERS ARE REQUIRED TO MAINTAIN SUCH AN INDEX REGARDLESS OF FACT THAT NOTICES ARE INDEXED UNDER SECTIONAL INDEXES AS PROVIDED IN 317.20, R. C.—§§317.201, 5309, 5301.51, 5301.52, 317.20, R.C.

SYLLABUS:

The "Notice Index" referred to in Section 317.201, Revised Code, is not applicable to Chapter 5309., Revised Code, pertaining to registration of land titles; and by the terms of said Section 317.201, all county recorders are required to maintain a "Notice Index," regardless of the fact that notices provided for in Sections 5301.51 and 5301.52, Revised Code, are indexed under sectional indexes as provided in Section 317.20, Revised Code.

Columbus, Ohio, September 20, 1961

Hon. James A. Berry, Prosecuting Attorney
Clark County, Springfield, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"Some diversity of opinion among county recorders has arisen as to the necessity for a county recorder to maintain the

“Notice Index” provided for in Section 317.201 of the Revised Code of Ohio and we request your opinion as to the following :

“(a) Does Section 317.201 of the Revised Code require that all county recorders maintain a book to be known as the “Notice Index” or is such “Notice Index” required only for land titles registered under Section 5309 of the Revised Code?

“(b) If sectional indexes are maintained under Section 317.20 of the Revised Code and notices provided for in Section 5301.51 and Section 5301.52 of the Revised Code are indexed therein, is it necessary that the recorder also maintain a separate book known as the “Notice Index”?

Amended House Bill No. 8, enacted by the 104th General Assembly, effective September 29, 1961, amends Sections 317.08, 317.18 and 317.20, Revised Code, and enacts Sections 317.201 and 5301.47 to 5301.56, inclusive, Revised Code, relative to marketable titles to real property and to the elimination of defects in title by passage of time unless such defects are preserved by notice. The applicable parts of such statutes read as follows :

Division (A) of Section 5301.51, Revised Code, provides in part :

“Any person claiming an interest in land may preserve and keep effective such interest by filing for record during the forty-year period immediately following the effective date of the root of title of the person whose record title would otherwise be marketable, a notice in writing, duly verified by oath, setting forth the nature of the claim. * * *”

Section 5301.52, Revised Code, provides :

“To be effective and to be entitled to record, the notice referred to in section 5301.51 of the Revised Code shall contain an accurate and full description of all land affected by such notice which description shall be set forth in particular terms and not by general inclusions ; but if said claim is founded upon a recorded instrument, then the description in such notice may be the same as that contained in such recorded instrument. Such notice shall be filed for record in the office of the recorder of the county or counties where the land described therein is situated. *The recorder of each county* shall accept all such notices presented to him which describe land situated in the county in which he serves and shall enter *and record* the same in the deed records of said county, and each recorder shall be entitled to charge the same fees for the recording thereof as are charged for recording deeds. In indexing such notices in his office each recorder shall enter such notices under the *grantee indexes of deeds* under the names

of the claimants appearing in such notices. Such notices shall *also* be indexed under the description of the real estate involved in a book set apart for that purpose to be known as the "Notice Index." (Emphasis added)

Section 317.20, Revised Code, provides :

"When, in the opinion of the board of county commissioners sectional indexes are needed, and it so directs, in addition to the alphabetical indexes provided for in section 317.18 of the Revised Code, the board may provide for making, in books prepared for that purpose, *sectional indexes to the records of all real estate in the county*, beginning with some designated year and continuing through such period of years as it specified, by placing under the heads of the original surveyed sections or surveys, or part of a section or survey, squares, subdivisions, or lots, on the left-hand page, or on the upper portion of such page of the index book, the following :

- "(A) The name of the grantor ;
- "(B) Next to the right, the name of the grantee ;
- "(C) The number and page of the record where the instrument is found recorded ;
- "(D) The character and date of the instrument, to be followed by a pertinent description of the property conveyed by the deed, lease, or assignment of lease ;
- "(E) In the opposite page, or on the lower portion of the same page, beginning at the bottom, in like manner, all the mortgages, liens, *notices as provided for in sections 5301.51 and 5301.52 of the Revised Code*, or other encumbrances affecting such real estate." (Emphasis added)

Section 317.201, Revised Code, provides :

"The county recorder shall maintain a book to be known as the 'Notice Index.' Separate pages of the book shall be headed by the original survey sections or surveys, or parts of a section or survey, squares, subdivisions, or lots. In this book there shall be entered the notices for preservation of claims presented for recording in conformity with sections 5301.51 and 5301.52 of the Revised Code. In designated columns there shall be entered on the left-hand page :

- "(A) The name of each claimant ;
- "(B) Next to the right, the name of each owner of title ;
- "(C) The deed book number and page where the instrument containing the claim has been recorded ;

“(D) The type of claim asserted; and on the opposite page on the corresponding line a pertinent description of the property affected as appears in such notice.”

From an analysis of the preceding quoted sections of the Revised Code it is apparent that notices as provided for in Sections 5301.51 and 5301.52, *supra*, are to be indexed in the sectional indexes to the records of all real estate in the county pursuant to the provisions of Section 317.20, *supra*, and that specifically the recorder shall enter such notices in the grantee indexes of deeds under the names of the claimants appearing in such notices; and further, that such notices shall *also* be indexed in a book set apart for that purpose to be known as “Notice Index,” the providing for and maintenance of such book being made mandatory under the provisions of Section 317.201, *supra*.

The provisions of Chapter 5309., Revised Code, pertain to the registration of land titles and have no connection either by reference or implication to the context of Section 317.201, *supra*.

Accordingly, it is my opinion and you are advised that the “Notice Index” referred to in Section 317.201, Revised Code, is not applicable to Chapter 5309., Revised Code, pertaining to registration of land titles; and by the terms of said Section 317.201, all county recorders are required to maintain a “Notice Index,” regardless of the fact that notices provided for in Sections 5301.51 and 5301.52, Revised Code, are indexed under sectional indexes as provided in Section 317.20, Revised Code.

Respectfully,

MARK McELROY
Attorney General