

3037.

FEE—COUNTY RECORDER—AMOUNTS CHARGEABLE FOR FILING AND INDEXING CHATTEL MORTGAGE—ASSIGNMENTS PRESENTED BOTH SIMULTANEOUSLY WITH AND AFTER THE ORIGINAL MORTGAGE.

SYLLABUS:

1. *Where an assignment of a chattel mortgage is made after the original mortgage has been filed, it is the duty of the county recorder to charge a fee of six cents for each party to the assignment for indexing such assignment.*

2. *Where a chattel mortgage is presented with an assignment already made, it is the duty of the county recorder to charge the amount provided for the filing of the original mortgage and in addition thereto, six cents for each party to the assignment.*

COLUMBUS, OHIO, December 19, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads as follows:

"You are respectfully requested to render this department your written opinion upon the following:

Section 8572, General Code, provides the fee which a recorder may charge for filing and indexing chattel mortgages. This department has in the past advised that where an assignment of a chattel mortgage was made after the original mortgage has been filed that it is the duty of the recorder to charge a fee of 6 cents for each party to the assignment for indexing such assignment. We have also advised that where a chattel mortgage is presented with an assignment already made that the fee should be the amount provided for the filing of the original mortgage and in addition thereto six cents for each party to the assignment.

Question: Is our interpretation of this section correct; if not, what is the proper interpretation?"

The answer to your question involves a consideration of several sections of the General Code pertaining to certain duties of the county recorder and the fees specified therefor.

Section 8560, General Code, reads as follows:

"A mortgage, or conveyance intended to operate as a mortgage, of goods and chattels, which is not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, subsequent purchasers, and mortgagees in good faith, unless the mortgage, or a true copy thereof, be forthwith deposited as directed in the next succeeding section."

Section 8562 of the General Code prescribes the duty of the county recorder upon the filing of a chattel mortgage and reads as follows:

"The officer receiving such an instrument shall indorse thereon the time of receiving it and its consecutive number, and enter in a book to be pro-

vided by the county the names of all parties thereto, alphabetically arranged, with the number of the instrument, its date, the day of filing it, and the amount secured thereby, which entry must be repeated, alphabetically, under the name of every party thereto. He also shall deposit the instrument in his office to be there kept for the inspection of all persons interested. When such mortgage is refiled or cancelled the date of such refileing or cancellation must be entered upon the margin of such record opposite the original entry."

The county recorder in addition to indorsing upon the chattel mortgage the time of receiving it and its consecutive number, is commanded to enter in a book the names of all parties thereto, alphabetically arranged, showing the number of the instrument, its date, the day of filing and the amount secured thereby. It is also provided that the entry must be repeated, alphabetically, under the name of every party thereto.

Section 8563 of the General Code provides that the county recorder must record the chattel mortgage at the request of the party depositing it and said section also provides that the county recorder "shall enter upon the margin of such record when the instrument is refiled any credit or statement placed thereon after it was recorded." It is also provided that the county recorder must note the cancellation and satisfaction of said mortgage upon the margin of the record without charge therefor.

Section 8572, General Code, to which you call attention provides what fees the county recorder may charge for performing the duties prescribed in the sections hereinbefore quoted. Said section reads as follows:

"For services in respect to chattel mortgages, or instruments for conditional sales, as provided in this chapter, the officer shall be entitled to receive the following fees: For filing each instrument or copy, six cents; for searching each paper, six cents; for making the entries upon the filing of an instrument, six cents for each party thereto; for recording such instrument, ten cents per hundred words; for recording any affidavit, credit or statement added to an instrument between the time of its record and refileing, twenty-five cents; and the like fees for certified copies of such instrument, or copies, as are allowed by law to county recorders for like services."

The county recorder under said section is entitled to charge the fees following:

- (a) For filing each instrument or copy, six cents;
- (b) For searching each paper, six cents;
- (c) For making the entries upon the filing of an instrument six cents for each party thereto.
- (d) For recording such instrument, ten cents per one hundred words; and
- (e) For recording any affidavit, credit or statement added to an instrument between the time of its record and refileing, twenty-five cents.

Specifically your questions are:

(1) Is it the duty of the county recorder where an assignment of a chattel mortgage was made after the original mortgage had been filed, to charge a fee of six cents for each party to the assignment for indexing such assignment.

Section 8572, General Code, *supra*, specifically provides for recording any affidavit, credit or statement added to an instrument between the time of its record and refileing, a fee of twenty-five cents and Section 8562, General Code, *supra*, provides that when the county recorder receives the instrument to be filed or recorded, he must enter the names of all parties thereto alphabetically arranged and that said entries shall be repeated alphabetically under the name of every party thereto. It is therefore believed that said county recorder is authorized to make the charge of six cents for each party to the assignment of a chattel mortgage under the provisions of Section 8572, *supra*, which provides that six cents for each party shall be charged for making entries upon the filing of an instrument.

(2) Where the chattel mortgage is presented with an assignment already made thereon, may the fee be charged for filing of the original mortgage and in addition thereto six cents for each party to the assignment.

Section 8572, General Code, *supra*, provides the fees to be charged upon the filing of an original instrument. The assignment is not a part of the original instrument, but is placed thereon after the execution of the original instrument and it becomes the duty of the county recorder after indexing the original parties to said instrument also to index the parties to the assignment. It is noted that the twenty-five cents named in said section is the fee for recording the affidavit, credit or statement added to an instrument between the time of its record and refile. It is clear, however, that although the assignment is written upon the chattel mortgage at the time of filing the same, nevertheless the county recorder has the duty of indexing said assignment and making the entries in regard thereto, for which duty there is prescribed a fee of six cents for each party thereto.

Specifically answering your questions it is my opinion that:

(1) Where an assignment of a chattel mortgage is made after the original mortgage has been filed, it is the duty of the county recorder to charge a fee of six cents for each party to the assignment for indexing such assignment.

(2) Where a chattel mortgage is presented with an assignment already made, it is the duty of the county recorder to charge the amount provided for the filing of the original mortgage and in addition thereto, six cents for each party to the assignment.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

---

3038.

LEASE—WITH PURCHASE OPTION—APPROVAL OF 99 YEAR LEASE  
BY PRESIDENT AND TRUSTEES OF OHIO UNIVERSITY FOR  
STADIUM—ATHLETIC PURPOSES.

*SYLLABUS:*

*The President and Trustees of Ohio University have the authority to enter into a ninety-nine year lease, with purchase option, for property to be used for the athletic purposes of Ohio University.*

COLUMBUS, OHIO, December 19, 1928.

HON. ELMER B. BRYAN, *President, Ohio University, Athens, Ohio.*

DEAR SIR:—This will acknowledge your recent communication as follows:

“I am handing you herewith a proposed plan whereby land and the construction of a stadium thereon for the use of Ohio University is to be financed by Athens banks without any cost to the State.

The plan, as you will observe, is to issue bonds which will be matured, as indicated, from funds to be derived from athletic and other activities of the University.