

OPINION NO. 1053

Syllabus:

The county recorder may not refuse to accept and to record an oil and gas lease which fails to contain the specific reference required by Section 5301.011, Revised Code.

To: Charles W. Ayers, Knox County Pros. Atty., Mt. Vernon, Ohio
By: William B. Saxbe, Attorney General, May 18, 1964

Your request for my opinion reads as follows:

"Revised Code Section 5301.011 became effective January 23, 1963, and reads as follows:

'A recorded grant, reservation, or agreement creating an easement or a recorded lease of any interest in real property shall contain a reference by volume and page to the record of the deed or other recorded instrument under which the grantor claims title, but the omission of such reference shall not affect the validity of the same.'

"I have been asked by the county recorder of our county whether she should accept for recording oil and gas leases which do not contain the volume and page of the record of the deed or other recorded instruments under which the lessor claims title."

The general problem raised by your request concerns the extent of a county recorder's power to reject instruments offered for recordation.

The duty of a county recorder to receive written instruments for recording is set forth in Section 317.12, Revised Code, as follows:

"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. Such file numbering shall be consecutive and in the order in which the instrument of writing is received for record, except chattle mortgage, which shall have a separate series of file numbers and be filed separately, as provided by sections 1319.01 to 1319.05, inclusive, of the Revised Code. Until recorded, each instrument shall be kept on file in the same numerical order, for easy reference. If required, the recorder shall, without fee, give to the person presenting such instrument a receipt naming the parties thereto, the date thereof, and a brief description of the premises. When a deed or other instrument is recorded, the recorder shall indorse on it the time when recorded, and the number or letter and page of the book in which it is recorded."

The duty to record instruments received is delineated in Section 317.13, Revised Code, as follows:

"The county recorder shall record in the proper record, in legible handwriting, typewriting, printing, or 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. Such instruments shall be recorded in regular succession, according to the priority of presentation, entering the file number at the beginning of such record.
* * *"

(Emphasis added)

My predecessors in office have opined that the county recorder is a ministerial officer only, and that his duty under Sections 317.12 and 317.13, *supra*, is to receive and to record a written instrument which purports to effect a conveyance or an encumbrance of an interest in real property. In regard to such instruments, the recorder's duty and authority do not include the power to make a judgment as to whether the contents of the instrument are legally sufficient to effect the purported result. See, Opinion No. 6400, Opinions of the Attorney General for 1956, page 275; and Opinion No. 4531, Opinions of the Attorney General for 1932, page 906.

The precise problem raised by your opinion request is: Does the omission of the reference required by Section 5301.011, *supra*, from an oil and gas lease filed with the county recorder constitute a defect in the instrument sufficient to warrant its rejection by the recorder?

With respect to written instruments affecting any type of interest in real property, Section 5301.25, Revised Code, requires recordation as follows:

"All deeds, land contracts referred to

in division (B) (2) of section 317.08 of the Revised Code, and instruments of writing properly executed for the conveyance or encumbrance of lands, tenements, or hereditaments, other than as provided in section 5301.23 of the Revised Code, shall be recorded in the office of the county recorder of the county in which the premises are situated, * * *"

(Emphasis added)

The general qualifications for a properly executed instrument are contained in Section 5301.01, Revised Code, as follows:

"A deed, mortgage, land contract as referred to in division (B) (2) of Section 317.08 of the Revised Code, or lease of any interest in real property must be signed by the grantor, mortgagor, vendor, or lessor, and such signing must be acknowledged by the grantor, mortgagor, vendor, or lessor in the presence of two witnesses, who shall attest the signing and subscribe their names to the attestation. Such signing must be acknowledged by the grantor, mortgagor, vendor, or lessor before a judge of a court of record, in this state or a clerk thereof, a county auditor, county engineer, notary public, mayor, or county court judge, who shall certify the acknowledgement and subscribe his name to the certificate of such acknowledgement."

(Emphasis added)

Section 5301.09, Revised Code, applies specifically to oil and gas leases, and reads in part as follows:

"All leases, licenses, and assignments thereof, or of any interest therein, given or made concerning lands or tenements in this state, by which any right is granted to operate or to sink or drill wells thereon for natural gas and petroleum or either, or pertaining thereto, shall be filed for record and recorded in such lease recorded without delay, and shall not be removed until recorded. No such lease or assignment thereof shall be accepted for record after the effective date of this section unless it contains the mailing address of both the lessor and leasee or assignee.
* * *"

(Emphasis added)

In reading these last three cited statutes together, the following conclusions arise from their express provisions:

1. Under Section 5301.25, supra, the recorder must accept and record any lease of real property which is properly executed.

2. Such lease is properly executed if all of the requirements of Section 5301.01, supra, are satisfied.

3. In addition to satisfying the requirements of proper execution, Section 5301.09, supra, creates an additional condition precedent to be met regarding an oil and gas lease in that, even though it may be properly executed, the recorder cannot accept it for recording unless it also contains the mailing address of both the lessor and lessee or assignee.

4. None of these sections make specific reference to Section 5301.011, supra, nor do they make compliance with such section a condition precedent to the acceptance of a lease by the recorder.

Section 5301.251, Revised Code, does specifically refer to Section 5301.011, supra, and make compliance therewith a condition precedent to acceptance by the recorder of a memorandum of a lease filed in lieu of a lease. However, your problem relates only to a lease.

Section 5301.011, supra, itself does not make compliance therewith a prerequisite either to the validity of the instrument or to the eligibility of such instrument for recordation. In fact, the use of the adjective "recorded" in the section implies that the instrument to which the section applies is one which already has been accepted and recorded by the recorder. Actually, this section has no legal significance regarding the validity or entitlement to recordation of any oil and gas lease because no related consequence springs from a failure to include the reference required by the section.

Therefore, it is my opinion, and you are so advised, that the county recorder may not refuse to accept and to record an oil and gas lease which fails to contain the specific reference required by Section 5301.011, Revised Code.