

OPINION NO. 66-125

Syllabus:

1. A county recorder is not precluded from making an uncertified copy either wholly or partially of any document or instrument recorded in his office and may charge for such uncertified copy a fee equal to the cost of providing that copy.

2. A county recorder has no authority to make copies

of documents or instruments he is not authorized by statute to record.

3. All fees and monies received by the county recorder as payment for the making of uncertified copies of documents or instruments filed in his office shall be deposited in the county treasury pursuant to Section 325.27, Revised Code.

To: Tom Richards, Carroll County Pros. Atty., Carrollton, Ohio

By: William B. Saxbe, Attorney General, July 20, 1966

Your recent request for my opinion contains the following questions:

"1. May a county recorder make a copy of an entire instrument recorded or filed in his office, but not certify the same? If the answer to this question is in the affirmative, what, if any, fee should be charged?

"2. May a recorder make a copy of less than an entire instrument recorded or filed in his office? What fee shall be charged if he is permitted to make an uncertified copy and what fee shall be charged if he is permitted to make a certified copy of a partial instrument?

"3. May a recorder make a copy of an entire instrument or less than an entire instrument that is not recorded or filed in his office? What, if any, fee shall he charge for making copies of these unrecorded or unfiled instruments?

"4. If the recorder is permitted to make uncertified copies of entire or partial recorded or filed instruments or of entire or partial unrecorded and unfiled instruments must he enter the charge therefor in his cash book and pay the same into the county treasury?"

Section 317.27, Revised Code, provides as follows:

"On demand and tender of the proper fees, the county recorder shall furnish to any person an accurate, certified copy of any record in his office, and affix his official seal thereto. The recorder

shall issue, without charge, upon the request of any discharged member of the armed forces, one certified copy of one certified photostatic copy of the recorded record of discharge, with the official seal of the county recorder affixed thereto.

"Any certified copy of any record, document, or map and any transcription of records, required or permitted to be made by the recorder, may be made by any method provided for the making of records."

It is to be noted that by this section the county recorder shall furnish a certified copy of any record in his office only "on demand and tender of the proper fees". In other words, the certified copy is furnished only when demanded by one who desires such a copy and who tenders the proper fee. But there is nothing in this section or in Chapter 317 itself which prohibits the furnishing of uncertified copies if a party so desires such a copy.

A "certified copy" of a record merely connotes a copy certified by a public officer having official custody of the recorded document. Bates v. Bates, 24 So. 2d 440. It is an authoritative attestation in writing by the custodian that the certified copy is a true copy of the document as it remains on file.

Section 317.16, Revised Code, dealing with the force and effect of certified copies provides as follows:

"After copies of records have been recorded, as provided in sections 317.14 and 317.15 of the Revised Code, in the county in which such lands, tenements, or hereditaments lie, a copy of such record, certified by the county recorder of the county in which the premises are situated, shall be received in evidence in the same manner and have the same force and effect as if the record were of the original instrument."

It would follow from a reading of this section that an uncertified copy would be such a copy as would not have the same force and effect when received in evidence as if the record were of the original instrument. Since the furnishing of such an uncertified copy requires less in the form of affirmative acts on the part of the county recorder and, therefore, in fact no more than is authorized by statute and, moreover, results in no increased liability on the part of

such recorder, I am persuaded such an uncertified copy may be furnished. Furthermore, I see no reason to disallow the making of copies of only part of a recorded document and thus find the above rationale equally applicable to such partial copies. In addition, Section 317.32 (C), Revised Code, infra, seems to comprehend certification of a partial copy of a document by providing a fee of "twenty-five cents for each hundred words".

May I invite your attention to Section 149.43, Revised Code, which deals with the availability of public records and provides:

"As used in this section, 'public record' means any record required to be kept by any governmental unit, including, but not limited to, state, county, city, village, township, and school district units, except records pertaining to physical or psychiatric examinations, adoption, probation and parole proceedings, and records the release of which is prohibited by state or federal law.

"All public records shall be open at all reasonable times for inspection. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time."

Since Section 149.43, supra, provides that copies shall be made available at cost, I am convinced the county recorder must charge a fee for uncertified copies equal to the cost of providing that copy.

Section 317.27, supra, provides the county recorder shall furnish certified copies of "any record in his office". Section 317.08, Revised Code, dealing with records to be kept by the county recorder lists five separate sets of records which he shall keep. In addition, Sections 317.09, 317.10, 317.24, and 317.25, Revised Code, inter alia, provide specific authorization for the keeping of certain other records. Section 149.43, supra, defines the term "public record" as meaning "any record required to be kept by a governmental unit". I am persuaded, therefore, that the county recorder may not make copies of records which he is not by specific statutory authorization required to record.

Section 325.27, Revised Code, provides:

"All the fees, costs, percentages, penalties, allowances, and other perquisites collected or received by law as compensation for services by a county auditor, county treasurer, probate judge, sheriff, clerk of the court of

common pleas, county engineer, or county recorder, shall be received and collected for the sole use of the treasury of the county in which such officers are elected, and shall be held, accounted for, and paid over as public moneys belonging to such county in the manner provided by sections 325.30 and 325.31 of the Revised Code."

I find no reason to exempt fees collected for providing uncertified copies from this section and am therefore persuaded that the county recorder must pay such fees into the county treasury.

Therefore, it is my opinion and you are hereby advised that:

1. A county recorder is not precluded from making an uncertified copy either wholly or partially of any document or instrument recorded in his office and may charge for such uncertified copy a fee equal to the cost of providing that copy.

2. A county recorder has no authority to make copies of documents or instruments he is not authorized by statute to record.

3. All fees and monies received by the county recorder as payment for the making of uncertified copies of documents or instruments filed in his office shall be deposited in the county treasury pursuant to Section 325.27, Revised Code.