

**OPINION NO. 69-139**

**Syllabus:**

1. A county auditor must accept for transfer on the tax duplicate any conveyance of real estate which enables him to identify the property to be transferred.

2. A county recorder must accept for filing any instrument which purports to transfer an interest in real estate.

---

**To: James W. Freeman, Coshocton County Pros. Atty., Coshocton, Ohio**  
**By: Paul W. Brown, Attorney General, October 14, 1969**

I have before me your request for information on the following questions:

1. May a county auditor refuse to accept for transfer on the tax duplicate a conveyance of real estate which does not contain a legal description of the property to be transferred in either the Certificate of Transfer or the Warranty Deed?

2. May a county recorder refuse to accept for recording a conveyance of real estate which does not contain a legal description of the property to be transferred in either the Certificate of Transfer or the Warranty Deed?

Copies of both the "Certificate for Transfer of Real Estate" issued by the probate court and the Warranty Deed which gives rise to your questions were attached to your request and each contains the following statement with respect to the properties which each purports to transfer:

"A n\* \* \* interest in and to all of the parcels and tracts of real property situated in the State of Ohio, Coshocton County, to which reference is hereinafter made, and the legal descriptions as contained in the conveyance hereinafter referred to being incorporated herein by reference as though fully rewritten herein:

" \* \* \*

\* \* \*

\* \* \*"

Thereafter appears a listing of each of the parcels and tracts and the following information with respect to each such listing: the volume and page of the Coshocton County Records

of Deeds reflecting the last previous transfer, the grantor(s) and grantees involved and the date upon which the instrument accomplishing the transfer was received for record.

It would appear that your first question is answered in the pertinent portion of Section 319.20, Revised Code, which reads:

"After complying with section 319.202 ~~319.20.2~~ of the Revised Code and on application and presentation of title, with the affidavits required by law, or the proper order of a court, bearing the last known address of the grantee, or of any one of the grantees named in the title, and a reference to the volume and page of the recording of the next preceding recorded instrument by or through which the grantor claims title, the county auditor shall transfer any land or town lot or part thereof, minerals therein, or mineral rights thereto, charged with taxes on the tax list, from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition; devise, descent, or otherwise.\* \* \*"

Section 319.202, Revised Code, which modifies the foregoing does not bear upon our problem as it deals only with conditions precedent to filing, such as declarations of value, fees and exemptions therefrom.

I am not unmindful of certain cases which would seem to either ignore or at least do violence to the foregoing statutory provision. However, close examination reveals that these decisions turned on points extraneous to Section 319.20, supra. For instance, State, ex rel., v. Shaver, 172 Ohio St. 111 (1961), held in substance that it is not error for a court to deny a writ of mandamus to compel the recording of a deed where the evidence is such as to support the court's finding that the description of the property is not definite, accurate and detailed. In its opinion, the Supreme Court pointed out at page 114: "We are dealing here with registered land, and Section 5309.79, Revised Code, provides that in every voluntary instrument used to transfer a part of land conveyed by a certificate of title 'an accurate description of such part enabling it to be definitely located and platted shall be given.'" Similarly, in State, ex rel., v. McKelvey, 124 N.E. 2d 124 (1961), the decision hinged on ability to identify the particular parcel involved. Neither of the foregoing fact situations is presented in our problem.

The following statements are made in 17 Ohio Jurisprudence 2d, Section 92, Deeds:

"The description is sufficient if it is such as to indicate the land intended to be conveyed, so as to enable a person to locate it."  
(Citing Cunningham v. Walker, Wright 366 (1833).)

And in 17 Ohio Jurisprudence 2d, Section 93:

"The description in a deed is sufficiently certain where it refers to another deed for the description of the land conveyed, if the land can be ascertained by such reference."  
(Citing McChesney v. Wainwright, 5 Ohio 452 (1832).)

The responsibility of the auditor with respect to real property is to compile and make up a general tax list and general duplicate of real and public utility property. Section 319.28, Revised Code. For this he need only be able to identify the tract involved and its owner.

In response to your second question, Section 317.33, Revised Code, provides in part:

"If a county recorder refuses to receive a deed or other instrument of writing presented to him for record, the legal fee for recording it being paid or tendered; or refuses to give a receipt therefor, when required; or fails to number consecutively all deeds or other instruments of writing upon receipt thereof, or fails to index a deed or other instrument of writing, by the morning of the next day after it is filed for record; or neglects, without good excuse, to record a deed or other instrument of writing within twenty days after it is received for record;\* \* \*he shall be liable to a suit on his bond, at the instance and for the use of the party injured by such improper conduct."  
(Emphasis added.)

Section 317.08, Revised Code, further provides:

"The county recorder shall keep five separate sets of records as follows:

"(A) A record of deeds, in which shall be recorded all deeds and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements, and hereditaments; all notices, as provided for in sections 5301.47 to 5301.56, inclusive, of the Revised Code; all declarations and bylaws as provided for in sections 5311.01 to 5311.22, inclusive, of the Revised Code; and all certificates as provided for in section 5311.17 of the Revised Code.

"\* \* \* \* \* \* \* \*"

There is no specific or implied duty placed upon the county recorder by either of the above quoted statutes or by any other language of the Revised Code that I have found which would require that he examine the legal sufficiency of each instrument filed. The mere receiving and recording of instruments of writing is a ministerial function of the office specifically required by Section 317.08, supra.

In the early case of Samuel Ramsey v. Zachariah Riley, 13 Ohio 157 (1844), the Supreme Court had before it a question of whether a county recorder who, without corrupt intent, recorded a forged receipt, could be held liable to a person who relied upon such recorded instrument. The court said, beginning at page 166 of the Riley case, supra:

"\* \* \*It is the duty of the recorder to enter of record all deeds, mortgages, and other instruments of writings, required by law to be recorded, and which are presented to him for that purpose.

Swan's Sta. 778. It is not his duty to determine the validity of such instruments as may be presented for record, or to ascertain whether they are genuine or forged. But even if it were, and he should act honestly and fairly, according to the best of his ability, he would not be responsible. Yet, undoubtedly, if regardless of his duty he should willfully and maliciously, with full knowledge, enter a false and forged instrument upon record, whereby some person was misled and injured, he would be responsible."

It is therefore my opinion and you are hereby advised:

1. A county auditor must accept for transfer on the tax duplicate any conveyance of real estate which enables him to identify the property to be transferred.
2. A county recorder must accept for filing any instrument which purports to transfer an interest in real estate.