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RECORDING OF CERTIFICATE OR LIEN OF A MUTUAL COMPANY—THE CHARGE OF FILING A CERTIFICATE WITH A COUNTY RECORDER IS 50 CENTS—§§3929.18, 317.32, 317.08, R.C.

SYLLABUS:

1. A certificate of lien of a mutual company provided for by Section 3929.18, Revised Code, should be recorded in the record kept by the county recorder pursuant to division (B) (1) of Section 317.08, Revised Code, or in the volume of liens mentioned in the last paragraph of said section, if such a volume is maintained.

2. Where pursuant to Section 3929.18, Revised Code, a certificate is filed with the county recorder, the recorder must record and index such certificate in his book of liens; and the charge for such recording and indexing is, under that section, fifty cents, regardless of whether the full legal description of the property is given in the certificate to describe the property concerned.

Columbus, Ohio, May 30, 1962

Hon. Richard F. Liggett, Prosecuting Attorney
Brown County, Georgetown, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 3929.18 of the Ohio Revised Code provides that a mutual insurance company has a lien for premiums upon the building insured and the land upon which it is situated. It further provides that such lien shall not take effect until the company files with the county recorder a certificate stating the date, number, and amount of the premium note and *such a description of the property insured as will enable a person readily to identify it*. The Section further provides that the recorder must record and index such certificate in his book of liens, for which he shall receive .50.¢

“The Recorder of Brown County received such a certificate which contained a complete legal description of the real estate upon which the insured buildings were situated. The description was in excess of one page. The Recorder of Brown County presently is recording instruments by the use of a Photostat Machine.

“Section 317.32 (D) provides that for recording and indexing when the photo copy or any similar process is employed the

recorder shall charge and collect \$1.00 for each page size 8½ x 14 or fraction thereof.

"The questions are as follows:

"1. Is the certificate recorded in the miscellaneous record, and if not, specifically which records should it be recorded in?

"2. Is the recorder required to photostat the entire certificate and description, and if so, should the fee be .50¢ under Section 3929.18 or \$2.00 under Section 317.32 of the Ohio Revised Code?"

Section 3929.18, Revised Code, reads as follows:

"Any building insured by a mutual company must be pledged to such company, together with the right and title of the insured in the land upon which it is situated, to the amount of the premium note or contingent liability, and the company shall have a lien on such building and land to the amount of such note or liability. Such lien shall not take effect until the company files, with the county recorder of the county in which the property insured is located, a certificate stating the date, number, and amount of the premium note or contingent liability, and such a description of the property insured as will enable a person readily to identify it.

"The recorder must record and index such certificate in his book of liens, for which he shall receive fifty cents."

Section 317.32, Revised Code, provides in part:

"For his services, the county recorder shall charge and collect the following fees:

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"(D) For recording and indexing when the photocopy or any similar process is employed, one dollar for each page, size eight and one-half by fourteen or fraction thereof, of such instrument;

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Addressing myself to your first question as to the record in which a lien of a mutual insurance company for premiums pursuant to Section 3929.18, *supra*, should be recorded by the county recorder, consideration must be given to Section 317.08, Revised Code, which reads in part:

"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 un-

conditional sale or conveyance of lands, tenements, and hereditaments; and all notices, as provided for in sections 5301.47 to 5301.56, inclusive, of the Revised Code;

“(B) A record of:

“(1) All mortgages or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or encumbered;

“(2) All executory installment contracts for the sale of land executed after the effective date of this section which by the terms thereof are not required to be fully performed by one or more of the parties thereto within one year of the date of such contracts;

“(C) A record of powers of attorney;

“(D) A record of plats, in which shall be recorded all plats and maps of town lots, and of the subdivisions thereof, and of other divisions or surveys of lands, and any center line survey of a highway located within the county, the plat of which shall be furnished by the director of highways or county engineer;

“(E) A record of leases, in which shall be recorded all leases.

“All instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record. The recorder may index, keep, and record unemployment compensation liens, federal tax liens, personal tax liens, mechanics’ liens, notices of liens, discharges of recognizances, and excise and franchise tax liens on corporations in one volume.”

In 34 Ohio Jurisprudence 2d, Liens, Section 2, page 412, it is stated:

“In the broadest sense, a lien is a charge upon real or personal property for the payment or discharge of a debt or duty.”

At page 415 of the same authority it is stated that in relation to the source from which they are derived, liens are classified as common law, equitable, statutory, and maritime liens. The lien here considered is created by virtue of Section 3929.18, *supra*, and it is, therefore, a statutory lien. It also appears that such lien is not a general lien, but a specific one, it being so closely and intimately attached to specific property that nothing can or need be done, as a matter of law, to specify the property, or subject it to the satisfaction of the lien, except the sale thereof. 34 Ohio Jurisprudence, Liens, Section 5, page 417.

I note that under Section 3929.18, *supra*, a mutual company, upon the filing with the county recorder of a certificate showing the amount of premium note or contingent liability, and the prescribed description of the property, has a lien both on the building such company has insured and on the land on which the building is situated.

It has been said that "encumbrance" is a broader term than "lien." *Condorodis v. Kling*, 33 Ohio App. 452, 458. However, it is to be noted in this connection that division (B) (2) of Section 317.08, *supra*, which provides for the record of "all mortgages or other instruments of writing" refers to "lands, tenements, or hereditaments," which "are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or encumbered."

A lien perfected under Section 3929.18, *supra*, undoubtedly is an instrument in writing whereby the land to which such lien attaches is conditionally affected; thus, such section can properly be recorded by the county recorder in the record of mortgages kept pursuant to division (B) (1) of Section 317.08, *supra*. Also, since under the last paragraph of said Section 317.08, the recorder may keep a record of certain liens in one volume, such certificate may be recorded in such volume.

Bearing in mind that in the instant case the county recorder is using a photostat machine for the recording of instruments, the second question you present for any determination relates to the fee for the recording of the certificate here under consideration. Is the county recorder entitled to the fee under division (D) of Section 317.32, *supra*, i.e., one dollar for each page of the size therein specified, or may he charge for the recording of such instruments only fifty cents, as provided by Section 3929.18, *supra*?

A quick glance at the history of the respective statutes shows that in the year of 1872, when the recording of the certificate of a lien here considered, with a fee of fifty cents, which is still in effect (69 Ohio Laws, 140), was provided for, the county recorder's fee for the recording of deeds, mortgages and other instruments of writing was twelve cents for every hundred words, having been set by statute in 1865 (62 Ohio Laws, 123). The general statute specifying the fee the county recorder may charge for his service has, of course, gone through many changes in the course of time since then encompassing almost a hundred years. But the legislature never saw fit, during all the years, to make a single substantial

change in the statute, which is now Section 3929.18, *supra*. This circumstance, plus the fact that the two statutes are found in chapters dealing with entirely different subjects speaks so plainly as regards the intent of the legislature that a further discussion of the many rules of statutory construction would be equivalent to carrying coal to Newcastle.

I will note, however, that it is well-settled that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subject matter as well as the specific subject; and I thus conclude that the fifty cent fee provided in Section 3929.18, *supra*, should be charged for the recording and index of a lien under that section.

It is true that in the instant case the certificate contains a full legal description of the property while the section requires only such a description as will enable a person readily to identify it. But there is no prohibition against the filing of a full legal description and, in truth, in some instances it might well be possible that such is needed to enable identification of the property. I therefore believe that my above conclusion should apply to the instant base.

Summarizing the foregoing in answering your questions, it is therefore my opinion and you are advised as follows:

1. A certificate of lien of a mutual company provided for by Section 3929.18, Revised Code, should be recorded in the record kept by the county recorder pursuant to division (B) (1) of Section 317.08, Revised Code, or in the volume of liens mentioned in the last paragraph of said section, if such a volume is maintained.

2. Where pursuant to Section 3929.18, Revised Code, a certificate is filed with the county recorder, the recorder must record and index such certificate in his book of liens, and the charge for such recording and indexing is, under that section, fifty cents, regardless of whether the full legal description of the property is given in the certificate to describe the property concerned.

Respectfully,

MARK McELROY

Attorney General