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INDEXES, ALPHABETICAL—MUST BE KEPT IN VOLUMES OR BOOKS—CONTAIN ALL THE NAMES OF PARTIES TO INSTRUMENTS RECORDED BY COUNTY RECORDER—SECTION 2764 G. C. DOES NOT PERMIT USE OF CARD INDEX SYSTEM IN LIEU OF VOLUME INDEXES.

SYLLABUS:

Under the provisions of Section 2764, General Code, the alphabetical indexes of all the names of parties to instruments received for record by the county recorder must be kept in volumes or books. Such section does not permit the use of a card index system in lieu of the volume indexes required thereunder.

Columbus, Ohio, September 17, 1943.

Hon. Frank W. Springer, Prosecuting Attorney,
Lisbon, Ohio.

Dear Sir:

Your request for my opinion reads:

"I am herewith enclosing a copy of a request for an opinion submitted to me by our county recorder.

I have gone over the sections of law relative to the indexing of records for deeds and mortgages on real estate, particularly Section 2764 of the General Code and do not find anything which prohibits the installation of a card index system for this purpose, except that Section 2764 uses the wording 'index volume' which would seem to imply that the indexes would be kept in book form. I also find on discussing the matter with our recorder that to the best of his information no card index system is used by any county in the state with the possible exception of Hamilton county, which uses a card index system for indexing mortgages on real estate but uses the volume system for indexing deeds.

The section relative to chattel mortgages formerly required a bound volume and the Legislature changed the wording of that section to permit the use of a card index system. I am of the opinion that a card index system would be permissible, but the recorder and I would prefer to have your opinion on the question. We request this opinion for the reason that if the card index system were installed and determined to be illegal, it would result in a large expenditure of funds and considerable incon-

venience to the public and the recorder of our county in the event it were not permissible.”

Appended thereto is a copy of a letter directed to you by your county recorder. Since its contents are apropos to the question, I quote therefrom in part:

“Is it permissible to install a card index system for the general index of deeds and mortgages on real estate in Columbian county in place of the cumbersome books which we are now using?”

This index would be similar to the card index which we are now using for chattel mortgages consisting of direct and reverse cards fastened into the file with a permanent rod.

A card index for the real estate deeds and mortgages would be more convenient to search, easier to type instead of writing long hand, and much cheaper in upkeep and replacement than the present system.”

Your inquiry necessitates a consideration of Section 2764, General Code, which reads:

“At the beginning of each day’s business the recorder shall make and keep up general alphabetical indexes, direct and reverse, of all the names of both parties to all instruments theretofore received for record by him. The volume and page where such instrument shall be recorded may be omitted until such instrument is actually recorded if the file number of such instrument be entered in place thereof, but such file number may be omitted from any *index volume* now in use if the form thereof is not adapted to entering such file number; said indexes shall show the kind of instrument, the date thereof, the range, township and section or the survey number and the number of acres, or the lot and subplot number and the part thereof, all as the case may require, of each tract or lot of land described in any such instrument of writing; the name of each grantor shall be entered in the direct index under the appropriate letter followed on the same line by the name of the grantee, or if there be more than one grantee, then by the name of the first grantee followed by the words ‘and others’ or their equivalent; and the name of each grantee shall be entered in the reverse index under the appropriate letter followed on the same line by the name of the grantor, or if there be more than one grantor, then by the name of the first grantor followed by the words ‘and others’ or their equivalent; in all cases of deeds, mortgages or other instruments of writing made by any sheriff, master commissioner, marshal, auditor, executor, administrator, trustee or other officer, for the sale, conveyance or incumbrance of any lands, tenements or

hereditaments, and recorded in the recorder's office, the recorder shall index the parties to such instrument under their appropriate letters, respectively, as follows: first the name or names of the person or persons represented by such officer as owner or owners of the lands, tenements or hereditaments described in any such instruments of writing; second, the official designation of the officer by whom such instrument of writing was made; and third, the individual name or names of the officer or officers by whom such instrument of writing was made; this section shall not be construed so as to affect any general alphabetical index now in use in any county of the state except that *all volumes of such indexes commenced after the passage of this act* shall be in conformity to the provisions of this section, and, whenever, in the opinion of the county commissioners, it becomes necessary to transcribe, on account of its worn out or incomplete condition, *any volume of such index now in use*, the same shall be revised and transcribed to conform herewith; except that in counties having a sectional index in conformity with section 2766 such transcript shall be only a copy of the original."

(Emphasis mine.)

As the above quoted statute and Section 2766 seem to be cognate legislation, I believe it might be well to set forth herein in part the pertinent provisions of this latter section, viz.:

"When in the opinion of the commissioners of any county sectional indexes are needed, and they so direct, in addition to alphabetical indexes provided for in section twenty-seven hundred and sixty-four, they may provide for the making in *books* prepared for that purpose, sectional indexes to the records of all real estate in the county, beginning with some designated year and continuing through such period of years as they may specify, by placing under the heads of the original surveyed sections or surveys, or parts of a section or survey, squares, subdivisions or lots, on the left hand page, or on the upper portion of such page of such *index book*, first the name of the grantor or grantors; second, next to the right, the name of the grantee or grantees; third, the number and page of the record where the instrument is found recorded; fourth, the character and date of the instrument, to be followed by a pertinent description of the property conveyed by the deed, lease or assignment of lease; and on the opposite page, or on the lower portion of the same page beginning at the bottom, in like manner, all the mortgages, liens or other incumbrances affecting said real estate.
* * *"

(Emphasis mine.)

It will be observed that in Section 2764, *supra*, there is a recurring use of the word "volume" which seems to be used in lieu of "book". As was said in the case of *Scoville v. Toland*, 21 Fed. Cases, 863:

“A book, in its popular sense, is understood to be a *volume*, bound or unbound, written or printed.”

A further definition of “book” is given in Bouvier’s Law Dictionary, viz.:

“A general name given to every literary composition which is printed, but appropriately to a printed composition bound in a *volume*.”

I do not feel that it would to any extent change the meaning of the legislation under consideration were one word to be substituted for the other. With this in mind, therefore, can it be said that the use of a card index system would meet the requirements of Section 2764, *supra*?

An inquiry somewhat similar in nature to yours was heretofore made with respect to the legislation dealing with chattel mortgages. The statutory enactment then under consideration by one of my predecessors was Section 8562, General Code, which now reads in part:

“The officer receiving such an instrument shall indorse thereon the time of receiving it and its consecutive number, and enter in a book *or on cards*, to be provided 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. * * *” (Emphasis mine.)

At the time of such inquiry, the above emphasized words were not included therein. Therefore, in directing your attention to Opinions of the Attorney General for 1935, at page 1322, it must be borne in mind that these words “or on cards” have changed the effect of this section. The syllabus of the above opinion reads:

“Section 8562, General Code, requires the names of all parties to chattel mortgages deposited with the county recorder, as well as other data therein set forth, to be entered in a book provided by the county for such purpose, and there is no authority to enter such data in a card index file.”

Manifestly, with the above quoted statute in its present form, authority is found therein for the use of a card index system in lieu of books. In other words, it would appear that the recorder is thereby afforded alternative means for filing and indexing chattel mortgages.

I do not wish to minimize the importance of keeping the necessary records with respect to chattel mortgages. However, I do not believe it will be seriously disputed that many reasons can be urged why records with respect to real estate are and should be of a permanent character. Nor do I believe it will be questioned that index volumes or books imply a permanency that might otherwise not exist. Apparently the General Assembly has had in mind this necessity and importance for permanency, and, until such time as it is deemed wise to change the system presently provided for, I would not consider it appropriate to read into the legislation language that I am unable to find therein which would change the clear intent of Section 2764, supra.

I might call attention to the fact that you have suggested that in all counties except Hamilton you understand a volume system is used for indexing mortgages. I am informed that the card index system in use there is in addition to the books that are kept in conformity with the aforesaid Section 2764. I am further informed that this card index system was installed primarily as a convenient means for title examiners and other persons examining records in said recorder's office. In fact, I am advised the only data that is carried in these index cards is the name of the mortgagor and the book and page wherein such mortgage is recorded.

In view of the foregoing, and in specific answer to your inquiry, it is my opinion that under the provisions of Section 2764, General Code, the alphabetical indexes of all the names of parties to instruments received for record by the county recorder must be kept in volumes or books. Such section does not permit the use of a card index system in lieu of the volume indexes required thereunder.

Respectfully,

THOMAS J. HERBERT,
Attorney General.