

**OPINION 65-233****Syllabus:**

It is not the duty of the county recorder to see that the proper documentary stamps are attached to a deed before he records it.

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**To: Bernard W. Freeman, Huron County Pros. Atty., Norwalk, Ohio**  
**By: William B. Saxbe, Attorney General, December 20, 1965**

Your recent request for my opinion presented the following question:

"Is it the duty of the County Recorder to see that the proper documentary stamps are attached to a deed before he records it?"

Section 4361, Volume 26 of the United States Code, which requires the imposition of a tax upon certain instruments, states the following:

"There is hereby imposed, on each deed, instrument, or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds \$100, a tax at the rate of 55 cents for each \$500 or fractional part thereof. As amended Sept. 2, 1958, Pub. L. 85-859, Title I, § 141 (a), 72 Stat. 1299."

Chapter 317 of the Ohio Revised Code establishes the powers and duties of the County Recorder. Section 317.08, Revised Code, states the instruments that shall be entitled to record. Section 317.111, Revised Code, prescribes additional specifications for certain of these instruments as follows:

"No instrument by which the title to real estate or personal property, or any interest therein or lien thereon, is conveyed, created, encumbered, assigned or otherwise disposed of, shall be received for record or filing by the county recorder unless the name of the person who, and governmental agency, if any, which, prepared such instrument appears at the conclusion of such instrument and such name is either printed, typewritten, stamped, or signed in a legible manner. An instrument is in compliance with this section if it contains a statement in the following form: 'This instrument was prepared by (name).'

"This section does not apply to any instrument executed prior to October 5, 1955, nor to the following: any decree, order, judgment, or writ of any court; any will or death certificate; any instrument executed or acknowledged outside of this state."

It is well established in Ohio that county officials have only such powers and duties as are expressly given them by statute or necessarily implied from the language of the statute. See State v. Goubeaux, 110 Ohio St., 287.

In the sections dealing with the powers and duties of county recorders there is nothing to be found which relates to the imposition of documentary tax stamps.

Therefore, it is my opinion and you are hereby advised that it is not the duty of the county recorder to see that the proper documentary stamps are attached to a deed before he records it.