

of fact made by you and set out in said transcript are such as, under the provisions of section 13971, General Code, and the special act authorizing the sale and conveyance of this parcel of land (H. B. 111, 116 O. L., 284), confer upon you authority to sell and convey the above described property.

The consideration to be paid for this land by said J. B. Furman is the sum of Two Hundred Dollars (\$200.00), the appraised value of this property, and in view of the amount of the purchase price of the property you are authorized to sell the same at private sale with the consent of the Governor and the Attorney General, as provided for under the provisions of section 13971, General Code, as well as by the special act of the Legislature above referred to.

I am accordingly approving your proceedings relating to the sale and conveyance of this property, as is evidenced by my approval endorsed upon the transcript and upon the duplicate copy thereof, both of which are herewith returned.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5383.

COUNTY RECORDER—MUST RECORD PROPER INSTRUMENTS AND CHARGE STATUTORY FEES—MAY NOT BE DONE BY PARTY PRESENTING INSTRUMENT FOR RECORDING.

SYLLABUS:

A county recorder is required to record all proper instruments and must charge for his services the fees enumerated in section 2778, General Code. The county recorder is unauthorized to reduce these fees where the party who presents the instrument for recording prepares the proper forms used in recording such instrument.

COLUMBUS, OHIO, April 18, 1936.

HON. W. W. BADGER, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR: This will acknowledge receipt of your request of my opinion, which reads as follows:

"G. C. 2778 provides that the Recorder is to charge twelve cents per each one hundred words, actually written, typed or

printed on the records and for indexing five cents for each grantor and each grantee.

The Rural Electrification has suggested that they will supply the forms as specified by the County Auditor and save the easements from being copied, and furnish the same free of charge to the Recorder, so that all that will be necessary for the County Recorder to do is to compare and index in their loose leaf volume.

In the event this is done, does the County Recorder charge twelve cents per hundred words actually on the sheet furnished to the Recorder at her specifications or since the same are furnished without cost to the County upon her specifications and all that is necessary is to place in the loose-leaf book, index and compare and would the charges in this event be only the cost of comparing and indexing? Would appreciate your opinion in regard to the above question as there are quite a number of easements for rural electrification and said easements are all alike and uniform all over the state of Ohio."

County recorders being public officers have only such powers as are conferred by statute and such implied powers as are necessary to effectuate the express powers. Consequently, public officials who are required by law to collect certain fees have no authority to decide that in certain cases it would be inequitable or unwise to assess the statutory fees. Had the Legislature intended to impose such discretion in the hands of public officials it would have been a comparatively simple matter to have used language appropriate to such intention. Hence, in those cases where discretion has been placed in a public official, the Legislature has in clear and unmistakable language expressed its intention. Section 2778, General Code, referred to in your letter reads in full as follows:

"For the services hereinafter specified, the recorder shall charge and collect the fees provided in this and the next following section. For recording mortgage, deed of conveyance, power of attorney or other instrument of writing, twelve cents for each hundred words actually written, typewritten or printed on the records and for indexing it, five cents for each grantor and each grantee therein; for certifying copy from the record, twelve cents for each hundred words.

The fees in this section provided shall be paid upon the presentation of the respective instruments for record upon the application for any certified copy of the record."

Section 2759, General Code, enumerates the duties of a county recorder when a proper instrument is presented for recordation. This

section provides that it is the duty of the county recorder and not of some third person to record the instrument. Section 2759, General Code, which is therefore pertinent to your inquiry reads as follows:

“The county recorder shall record in the proper record in a fair and legible handwriting, typewriting, or printing, all deeds, mortgages, or other instruments of writing required by law to be recorded, presented to him for that purpose. They shall be recorded in regular succession according to the priority of presentation, entering the file number at the beginning of such record. At the foot of the record of each instrument he shall record the date and precise time of day when it was presented for record.”

In your letter you state that the instrument would be copied and prepared for recordation by the parties who present the instrument to the county recorder. In other words, the actual work that is usually performed by the county recorder will be in part, at least, performed by the person who presents the instrument for recordation. Consequently, all the recorder would have to do would be to compare the prepared record with the original instrument and then properly index the conveyance. This would, of course, materially decrease the work of the county recorder in recording such instruments. However, there is no statutory authority for such procedure and, while it might be argued that such a practice would be desirable, the remedy, if any, would seem to rest with the Legislature. In your letter you indicate that the recorder might charge the actual cost for such comparison as well as the cost of indexing. However, there is no statutory authority to charge any fee for such a procedure. Likewise there is serious danger that if the county recorder authorized such a procedure he might be liable on his official bond under the provisions of Section 2781, General Code.

With reference to the question as to whether or not the peculiar position of the persons who seek to record these instruments should change the conclusion herein reached the following authorities may be of some assistance. In an opinion to be found in the Opinions of the Attorney General for 1927, Vol. 3, page 2146, it was held as disclosed by the syllabus:

“1. When right of way deeds are executed and delivered to the state and are filed with a county recorder by a state department for recording, as provided for in Section 267, General Code, it is the duty of such department to pay to the county recorder the proper recording fees.

2. When right of way deeds are executed and are delivered to the state and are filed by the Board of County Commissioners,

as provided for in Section 267, General Code, it is the duty of such Board to pay to the county recorder the proper recording fees."

In the case of *Radway v. Selectmen of Dennis, et al.*, 266 Mass., 329, 165 N. E., 410, it was held as disclosed by the first paragraph of the syllabus:

"1. G. L. c. 262, section 38, requiring payment of fees of register of deeds when instrument is left for recording; applies to municipal officers with reference to instruments required to be recorded by city."

An examination of section 38 of Chapter 262 of Annotated Laws of Massachusetts, shows that it provides:

"The fees of registers of deeds except as otherwise provided, to be paid when the instrument is left for recording, filing or deposit, shall be as follows: (Then follows setting out fees for described services.)

The court stated at page 411:

"By G. L. c. 262, section 28, the fees of registers of deeds must be paid when the instrument is left for recording. The statutes make no exceptions in favor of municipal officers. They as well as all others, must comply with the mandate of the statute as to fees."

In view of the above and without further extending this discussion, it is my opinion in specific answer to your inquiry that a county recorder is required to record all proper instruments and must charge for his services the fees enumerated in Section 2778, General Code. The county recorder is unauthorized to reduce these fees where the party who presents the instrument for recording prepares the proper forms used in recording such instrument.

Respectfully,

JOHN W. BRICKER,
Attorney General.