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COUNTY RECORDER—FEE TO FILE CHATTEL MORTGAGE—
THIRTY CENTS—NOT AUTHORIZED TO MAKE ADDITIONAL
CHARGE WHERE ASSIGNMENT APPEARS — SECTION 8572
G. C.

SYLLABUS:

Under the provisions of Section 8572, General Code, the fee that a county recorder is entitled to receive for filing a chattel mortgage is thirty cents, and the fact that an assignment appears thereon does not authorize him to make any additional charge.

Columbus, Ohio, November 19, 1943.

Hon. Frank T. Cullitan, Prosecuting Attorney,
Cleveland, Ohio.

Dear Sir:

Your request for my opinion reads as follows:

“I am requested by Donald F. Lybarger, county recorder, Cuyahoga County, to obtain your opinion upon the following subject as set forth in his letter to me:

'Amended Senate Bill No. 186, was passed by the General Assembly June 10, 1943, and became effective September 27th. Among other things it seeks to amend Section 8572 of the General Code, so that in part this section will read as follows: * * *

QUERY: When a chattel mortgage which is presented for record has on it an assignment, what charge is the county recorder to make on such assignments?

It is clear that the charge for a chattel mortgage is 30c and that if an assignment or any other statement is attached "to any filed instrument after the filing thereof", the charge shall be 25c; however, many chattel mortgages are originally presented with assignments upon them. These must be indexed separately. It does not appear what the charge for this service shall be.' "

You have directed attention to Amended Senate Bill No. 186, under the provisions of which Section 8572, General Code, was recently amended. This bill also brought about certain changes in the language of other statutory enactments which, I believe, it might be well to consider in connection with your inquiry.

Section 8562, General Code, now provides:

"The county recorder upon receiving *such instrument* shall endorse thereon the time of receiving it and its consecutive number, and enter in a book or on cards, (which shall be known as the chattel mortgage index) to be provided by the county, *the names of all parties thereto*, alphabetically arranged, with the number of the instrument, its date, the date on which it was so received, and the amount secured thereby as set forth in the sworn statement to be furnished therewith, *which entry must be repeated, alphabetically, under the name of every party thereto*. He also shall file the instrument in his office to be there kept for the inspection of all persons interested, *unless deposited for recording under section 8563, General Code*. In case said instrument is presented for refileing the office receiving the same shall file, handle, number, index and treat it as an original filing. When any chattel mortgage so filed is refiled or, when a chattel mortgage, whether filed or recorded, is canceled the date of such refileing or cancellation must be entered upon the margin of such chattel mortgage index opposite the original entry, if not refiled, or opposite the last entry, if refiled." (Emphasis added.)

The words "such instrument", appearing therein at the outset, have reference to the instruments mentioned in Section 8560, General Code, and would include a chattel mortgage.

Section 8563, General Code, as now in force and effect, provides in part as follows:

“A mortgage upon both real and personal property (but not upon personal property only) or a true copy thereof, may be deposited with the county recorder with the request that the same be recorded, in which case the county recorder must record it at the expense of the person making the request in a book to be provided by the county to be known as the chattel mortgage record; provided that if such instrument or the original of which such instrument is a true copy is or shall have been also deposited with the county recorder for recording as a real estate mortgage, he shall accept *and index such instrument as a chattel mortgage as provided in section 8562, General Code*, but in lieu of recording the entire contents thereof in the chattel mortgage record he shall record therein the names of all parties thereto, together with the sworn statement furnished therewith as required by section 8564, General Code, and a reference to the volume and page at which the same is recorded as a real estate mortgage, and such recording shall constitute sufficient recording thereof for the purposes of this section.” (Emphasis added.)

Section 8572, General Code, which you set forth in your above request, reads:

“For services in respect to chattel mortgages, or instruments for conditional sales or other instruments, as provided in this chapter, the county recorder shall be entitled to receive the following fees: For filing each instrument or copy, (whether on the original filing or refiling) thirty cents; for attaching to any filed instrument *after* the filing thereof any sworn statement, credit, *assignment* or any other document, twenty-five cents; and the like fees for certified copies of any instrument, or copies *and for services not herein provided for*, as are allowed by law to county recorders for like services.” (Emphasis added.)

Before the language of this latter section was amended to read as above, the identical question on which you now request my opinion was passed upon by one of my predecessors. In order that the change in such wording may be observed, I now set forth the provisions of said section as it formerly existed, to-wit:

“For services in respect to chattel mortgages, or instruments for conditional sales, as provided in this chapter, the officer shall be entitled to receive the following fees: For filing each instrument or copy, six cents; for searching each paper, six cents; for making the entries upon the filing of an instrument, six cents for each party thereto; for recording such instrument, ten cents per hundred words; for recording any affidavit, credit or statement added to an instrument between the time of its record and refiling, twenty-five cents; and the like fees for certified copies of such

instrument, or copies, as are allowed by law to county recorders for like services.”

As has been pointed out in Opinions of Attorney General for 1928, Vol. 4, p. 2863, the county recorder was authorized to make the following charges: (a) For filing each instrument or copy, six cents; (b) for searching each paper, six cents; (c) for making the entries upon the filing of an instrument, six cents for each party thereto. There being in any event two parties to a chattel mortgage, it is manifest that under the provisions of Section 8572, General Code, as it formerly existed, the minimum charge for filing such an instrument was twenty-four cents.

In considering the matter of the charge to be made when an assignment appeared thereon, my aforesaid predecessor held, as more fully disclosed by the second branch of the syllabus of that opinion, viz.:

“Where a chattel mortgage is presented with an assignment already made, it is the duty of the county recorder to charge the amount provided for the filing of the original mortgage and in addition thereto, six cents for each party to the assignment.”

Of course there are not less than two parties to an assignment—the original mortgagee becoming the assignor, and the third party being the assignee. An additional charge of twelve cents was therefore authorized when, at the time of the presentation of the document, such chattel mortgage bore an assignment. Therefore, I think it must be agreed that under the law as it formerly existed, and as interpreted in 1928 by the then Attorney General, the total charge that was authorized for the filing and indexing of a chattel mortgage with one assignment thereon (and only one assignee) was thirty-six cents. I might also call attention to Opinions of the Attorney General for 1930, Vol. I, p. 255, wherein the then Attorney General passed upon the identical question that had theretofore been decided. In the 1930 opinion it was said that the former ruling was adhered to for the reasons therein set forth.

What are the present duties of the recorder under existing statutory enactments when a chattel mortgage has on it an assignment at the time of presentation for filing? At the time of the rendition of the above mentioned 1928 opinion, the then Attorney General recognized that the recorder could not ignore the fact that an assignment appeared thereon. This is evident from the following language appearing at page 2865, to-wit:

“The assignment is not a part of the original instrument, but is placed thereon after the execution of the original instrument and it becomes the duty of the county recorder after indexing the

original parties to said instrument also to index the parties to the assignment.”

An examination of both Sections 8562 and 8563, *supra*, **convinces me** that the names of the assignor and assignee must be indexed as well as those of the mortgagor and mortgagee. As was heretofore pointed out, the assignment is not part of the original instrument. Nevertheless, in the enactment of these two sections the General Assembly did not thereby attempt to limit the indexing of the instrument under the names of the mortgagor and mortgagee only. Instead, it again used broad language when it said in Section 8562, *supra*, that the recorder shall “enter in a book or on cards * * * the names of all parties thereto.”

By reason of the change in the fee provisions of Section 8572, General Code, in a great many instances the recorder will be charging thirty cents, whereas the charge under the old enactment would have been limited to twenty-four cents. In those cases where an assignment appears on the margin, he will receive less. Where the advantage lies is of little moment. Suffice it to say that when it recently amended Section 8572, General Code, the General Assembly saw fit to eliminate therefrom those provisions pursuant to which it has been held the recorder was authorized to charge six cents for indexing the name of each party to a chattel mortgage. That it was within the scope of the legislative power to do so cannot be denied. The section as it now reads seems plain and unambiguous. I am unable to read into it words that can be construed as authorizing a charge of more than thirty cents for filing a chattel mortgage, notwithstanding an assignment appears thereon at the time the same is presented to the recorder.

This leaves as a remaining matter for consideration the question of whether or not, under the provisions of Section 8572, *supra*, the words “and the like fees * * * for services not herein provided for” authorize the charge for indexing the names of the parties to an assignment. Reference to other statutory enactments relative to the fees of the recorder discloses that Section 2778, General Code, provides:

“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 records, twelve cents for each hundred words. The fees in this section provided shall be paid upon the presentation of the respective instruments for record or upon the application for any certified copy of the record.”

This would appear to be the only section that has reference to the fees for indexing the names of parties to an instrument. But I do not believe it can be maintained successfully that such section affords authority for an additional charge when the chattel mortgage that is presented has on it an assignment by the mortgagee to a third party.

In specific answer to your question, it is therefore my opinion that under the provisions of Section 8572, General Code, the fee that a county recorder is entitled to receive for filing a chattel mortgage is thirty cents, and the fact that an assignment appears thereon does not authorize him to make any additional charge.

Respectfully,

THOMAS J. HERBERT,
Attorney General.