

**OPINION 65-224**

**Syllabus:**

If an attorney should seek to record a typed release of mortgage or lien by having the county recorder make a photocopy of the separate instrument upon which such release appears, then the county recorder is entitled to the charges set forth in both Sections 317.32 (D) and (H), Revised Code.

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**To: Harry A. Sargeant, Jr., Sandusky County Pros. Atty., Fremont, Ohio**  
**By: William B. Saxbe, Attorney General, December 16, 1965**

Your recent request for my opinion contains the following question:

"If an attorney seeks to record a typed release of mortgage or lien, may the County Recorder charge that attorney one dollar for the photocopy and recording of that typed release, plus fifty cents per marginal entry for each and every page on which such entry must be made, or does the wording of Section 317.32 (H) require that only fifty cents be charged for the recording of any assignment or satisfaction of mortgage?"

The duties of the county recorder pertaining to the recording, by separate instrument, of an assignment, release or satisfaction of a mortgage are prescribed in Sections 5301.32 and 5301.34, Revised Code. Section 5301.32 treats the assignment or partial release of a mortgage by separate instrument as follows:

"A mortgage may be assigned or partially released by a separate instrument of assignment or partial release, acknowledged and witnessed as provided by section 5301.01 of the Revised Code. Such separate instrument of assignment or partial release shall be recorded in the book provided by section 5301.34 of the Revised Code for the recording of satisfactions of mortgages, and the county recorder shall be entitled to charge the fee for such recording as provided by section 317.32 of the Revised Code for the recording deeds."

(Emphasis added)

Section 5301.34, supra, referred to in the provision above, states the following:

"A mortgage must be discharged upon the record thereof by the county recorder when there is presented to him a certificate executed by the mortgages or his assigns, acknowledged and witnessed as provided in section 5301.01 of the Revised Code, certifying that the mortgage has been fully paid and satisfied. In addition to the discharge on the records by the recorder, such certificate shall be recorded in a book kept for that purpose by the recorder. Such recorder is entitled to the fees for such recording as provided by section 317.32 of the Revised Code for recording deeds."

(Emphasis added)

Thus, when a county recorder is presented with such a separate instrument as described in Section 5301.32, supra, he must record this separate instrument in the book provided by Section 5301.34, supra, and also make a

notation on the record of the original mortgage to the effect that it has been discharged, assigned or partially released.

Section 317.32, Revised Code, establishes the fees to be charged by the county recorder and reads in pertinent part as follows:

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

"(A) For recording manually or through the use of a typewriter a mortgage, deed of conveyance, power of attorney, or other instrument of writing, twenty-five cents for each hundred words actually written, typewritten, or printed on the records;

"(B) For indexing it, ten cents for each grantor and each grantee in such instrument;

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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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"(G) For recording assignment or satisfaction of mortgage or lease or any other marginal entry, fifty cents;

"(H) For recording assignment or satisfaction of mortgage or lease or any other marginal entry by separate instrument, fifty cents for each assignment or satisfaction or other marginal entry set out in such instrument;"

(Emphasis added)

This statute was interpreted, as it read before the addition of sub-section (H), in Opinion No. 1770, Opinions of the Attorney General for 1960, page 642. The question being considered in that opinion related to the recording of separate instruments in separate record volumes through the use of a typewriter, with a reference to such separate volume being entered on the margin of the original record. Citing Sections 5301.32 and 5301.34, supra, the then Attorney General stated that the notation made on the record of the original instrument was an indexing notation and not in and of itself a marginal entry. Consequently, the charge for such a notation was found to be that set out in sub-section (B), relating to indexing, and not that prescribed in sub-section (G) for a marginal entry. Thus, as demonstrated by the 1960 opinion, the

prior interpretation of Section 317.32, supra, was that where a county recorder manually recorded and indexed an assignment, satisfaction or partial release by separate instrument, he could charge pursuant to sub-sections (A) and (B), but not sub-section (G).

Section 317.32 (D), supra, refers generally to any instance of recording and indexing which involves the photocopy process or any similar process. The indexing for such a photocopy is not subject to a separate charge, since it is included within the one dollar charge for each page as photocopied. This sub-section is analogous to sub-sections (A) and (B), which relate to the charge for manual recording and indexing. Sub-section (D) establishes a single charge for recording and indexing.

In recent months, county recorders have been presented with the problem of great increases in the number of assignments, satisfactions, and partial releases which must be recorded. Probably the most important single cause for this has been the increase in the number of transactions involving oil and gas leases. The recorder is often presented with a separate instrument upon which several different entries are set out. Following the prior interpretation of Section 317.32, supra, the recorder could charge only those fees set out in sub-sections (A) and (B) if the recording was manual or typewritten, or under sub-section (D) if the recording was done by means of a photocopy process. The obvious result of this was that the amount of work involved became disproportionate to the charge allowed, especially in regard to the entering of the indexing notations on the original record.

It is my opinion that the addition of sub-section (H) was directed toward the alleviation of this problem. Pursuant to this new sub-section, the recorder may now charge fifty cents for "each assignment or satisfaction or other marginal entry set out in such instrument". Therefore, when an attorney wishes to have recorded a separate instrument upon which several assignments or other entries are set out the county recorder is entitled to charge that attorney one dollar for the photocopy recording and indexing, pursuant to sub-section (D), plus fifty cents for each assignment, satisfaction or other marginal entry, appearing upon the separate instrument, pursuant to sub-section (H).

Therefore, it is my opinion and you are hereby advised, that if an attorney should seek to record a typed release of mortgage or lien by having the county recorder make a photocopy of the separate instrument upon which such release appears, then the county recorder is entitled to the charges set forth in both Sections 317.32 (D) and (H), Revised Code.