2205.

PLATS AND MAPS OF TOWN LOTS—NOT INSTRUMENTS IN WRITING UNDER SECTION 2757, GENERAL CODE—MAY BE RECORDED BY PHOTOSTATIC PROCESS.

SYLLABUS:

Plats and maps of town lots, and of the subdivisions thereof, and of other divisions or surveys of lands, entitled to record under the provisions of Section 2757, General Code, are not instruments of writing within the provisions of Section 2759, General Code, directing that 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; and maps and plats, entitled to record, may be recorded by photostatic process.

COLUMBUS, OHIO, June 5, 1928.

HON. CHARLES P. TAFT, 2ND, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date requesting my opinion, which letter is as follows:

> "The County Recorder of Hamilton County has raised the question as to whether or not plats may be recorded in his office by photostatic process.
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> Attorney General John G. Price, in Opinion No. 2997, 1922, Opinions of Attorney General, Vol. 1, page 290, ruled that photostating could not properly be considered as 'printing' under the terms of Section 2759 of the Ohio General Code.
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> This section provides that the county recorder shall 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.'
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> While it is quite plain that the rule would apply to written instruments, such as deeds, mortgages, leases, and the like, it appears to us that perhaps plats would stand in a slightly different category. The plats presented are in effect drawings and the only written portion is the signatures of these plats.
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> The Recorder raises the question whether, therefore, they can be considered as 'instruments of writing' which within the meaning of Section 2759, must be recorded either in handwriting, typewriting, or printing. We are therefore writing to respectfully request your opinion as to whether or not plats can be recorded by photostatic process."

In the opinion referred to in your letter, namely, Opinion No. 2997, Opinions Attorney General, 1922, Volume 1, page 290, rendered under date of April 15, 1922, to the Honorable Edward C. Stanton, Prosecuting Attorney, Cleveland, Ohio, my predecessor in office, held as follows:

> "The word 'printing' occurring within the provisions of Section 2759, G. C., and authorizing one of the three methods by which county recorders shall record the instruments specified by the section, contemplates the process commonly known and designated as typographical printing, and is not broad enough in the sense and meaning used to include the process of photostating, or photographic printing."

In the opinion, after quoting Section 2759, General Code, hereinafter set forth, the then Attorney General said:

> "Construing the section quoted, it becomes apparent that the Legislature has provided three methods by which county recorders are required to record all deeds, mortgages or other instruments of writing required by law to be recorded, and the three methods indicated are, by fair and legible 'handwriting,' 'typewriting,' or by 'printing.'
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> It is obvious that the process of 'photostating' or photographic printing cannot be said to come within the meaning of the words handwriting, or typewriting as used in the section, but whether or not the same may be said to come within the meaning of the word 'printing' so used, becomes the principal question for consideration."

Definitions of "photography" and "printing" were then given and the differences between the two discussed, the opinion continuing in part as follows:

> "Thus it is thought to be concluded that the process of printing as applied in photography is not the same process commonly termed 'printing' when such a word is used in its ordinary significance.
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> Consideration may at this point be given the question of legislative intent in the use of the word 'printing' as it occurs in Section 2759, G. C. A brief history of the section reveals the fact that the word 'printing' first occurs in the amendment of original Section 1145 R. S., in H. B. No. 578, passed by the Legislature May 12, 1902, 95 O. L., 606, and previous to such amendment the section provided that the recorder should record the designated instruments in a fair and legible 'handwriting', the words 'typewriting or printing' not having been written into the section previous to this time. That is to say, that for approximately twenty years the word 'printing' has continued within the written provisions of the section considered. The question may now be asked, did the Legislature intend by the act of May 12, 1902, to use the word 'printing' in the sense and meaning commonly attributed to the word, i. e. in its typographical sense, or did it intend by the use of the word to include a process involving the principles of photography in the recording of the instruments specified by the section.
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> It is not known definitely as to the date of the invention or perfection of the process or art called 'photostating,' however from information available it is not believed that the process could be said to have existed or been known at the time of the enactment of H. B. No. 578, May 12, 1902, and under such circumstances it is hardly possible that the Legislature intended by the use of the word 'printing' to include such a process. It would seem therefore more reasonable to presume, that by the use of the word printing the Legislature contemplated the process of typographical printing, or that ordinarily obtained from the use of inks or pigments and the mechanical impression of types upon paper or other impressible surfaces.
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> Viewed however in the light of economy it would seem that such a process might possess many advantages over those methods now employed in the recording of public records, since from information obtainable it is thought the same might save time and labor, as well as being less expensive than the present methods in use. While appreciative therefore of the advantages possibly attainable by the adoption of this modern method of recording public records, yet until such a time as the Legislature may see fit to more

specifically authorize such a process, I feel unwarranted in concluding that the word 'printing' as used in Section 2759, G. C., may be construed to include the process of photostating. Specific answer therefore to your question must be made in the negative."

I am informed that since the date of its rendition the above opinion has been generally adhered to by the officers concerned throughout the state, and I see no reason to disturb the conclusions reached by my predecessor.

In this connection, I am not unmindful of the fact that two separate bills, either of which would have had the effect of amending Section 2759, General Code, were introduced in the 87th General Assembly, and that both these bills failed of passage. The first of these was House Bill No. 4, which read:

"Whenever any officer, office, court, board, institution, department, agent, or employe of the state or of any subdivision, district, agency, or department thereof, is required or authorized by law, or has the duty to record or copy any document, plat, paper, or instrument of writing, such recording or copying, in addition to other methods authorized by law, may be done by any photostatic or photographic process which clearly, accurately, and completely copies, photographs, or reproduces the original document, plat, paper or instrument of writing."

The other was Senate Bill No. 32, which expressly provided for the amendment of Section 2759, General Code, in the following language:

"That Section 2759 of the General Code be amended to read as follows:

Section 2759. The county recorder shall record in the proper record in a fair and legible handwriting, typewriting, (or) printing, or by photographic process, 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."

This brings me to a consideration of the question presented by you as to whether or not "plats and maps of town lots, and of the subdivisions thereof, and of other divisions or surveys or lands" are instruments of writing within the provisions of Section 2759 to the effect that 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." In other words, is a map or plat one of the "other instruments of writing" referred to in Section 2759, infra. Section 2757, General Code, prescribing the sets of records required to be kept by county recorders and what shall be recorded in each, provides as follows:

"The recorder shall keep four separate sets of records, namely: First, a record of deeds, in which shall be recorded all deeds, powers of attorney, and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements and hereditaments; Second, a record of mortgages, in which shall be recorded all mortgages, powers of attorney, or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or incumbered in law; Third, a record of plats, in which shall be recorded all plats and maps

of town lots, and of the sub-divisions thereof, and of other divisions or surveys or lands; Fourth, a record of leases, in which shall be recorded all leases and powers of attorney for the execution of leases. All instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record."

Section 2759, General Code, providing how certain records shall be made, 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." (Italics the writer's.)

Whether or not certain documents or instruments of writing come within a statute using that term depends upon the context or circumstances surrounding such use. The law is well stated in 32 Corpus Juris, 946:

"A 'written instrument,' or an 'instrument in writing' or an 'instrument of writing' is a descriptive phrase, with a legal meaning, implying an agreement or contract which it contains, and of which it is a memorial. It is defined to be anything reduced to writing, a writing expressive of some act; something reduced to writing as a means of evidence. The term does not comprehend all written papers. According to the context or circumstances attending its use the term 'written instrument' or 'instrument in writing' may include a bill of exchange, a bond, a county warrant, a deed, a mechanic's lien, a mortgage, a policy of insurance, a promissory note, a receipted voucher showing the amount agreed upon as due, and an acknowledgment of its payment, a release, a return to a writ of certiorari, a will, or written contracts. On the other hand the context or circumstances may show that the term was not employed in such a sense as to include a judgment, an abstractor's certificate of title, an agreement in the nature of articles for the formation of a copartnership, a stenographer's report of oral testimony although filed in court, a suit, a tax duplicate, a will wholly invalid, or returns of marriages, births, and deaths."

One of the well-recognized rules of statutory construction is that general words, following an enumeration of persons or things by words of a particular or specific meaning, are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. This is called the *ejusdem generis* rule; and under such rule such expressions as "and other," or "and all other," or "and any other," are usually to be restricted to persons or things of the same kind or class as those expressly named in the preceding words. The rule is stated thus in 36 Cyc. 1119:

"By the rule of construction known as 'ejusdem generis,' where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. The particular words are presumed to describe certain species and the general words to be used

> for the purpose of including other species of the same genus. The rule is based on the obvious reason that if the Legislature had intended the general words to be used in their unrestricted sense they would have made no mention of the particular classes. The words 'other' or 'any other' following an enumeration of particular classes are therefore to be read as 'other such like,' and to include only others of like kind or character. * * *"

While a map or plat may be an instrument of writing for some purposes and within the meaning of certain statutes, it is my opinion that maps or plats are not included within the provisions of Section 2759, above referred to. In the first place, I feel that, generally speaking, the terms "written instruments" or "instruments of writing" do not include maps or plats in the ordinary signification of those words. "Instruments of writing" are *written* or printed, and ordinarily they contain characters or letters forming words and sentences expressive of ideas. Maps or plats, on the other hand, are *drawn* or printed and contain lines and symbols forming a graphic representation of the surface of the earth portrayed by it.

In any event, in view of the rule of statutory construction above set forth, and the context of Section 2759, supra, it is my opinion that maps and plats are not included within the terms of said section. You will observe that Section 2759 reads, "all deeds, mortgages or other instruments of writing." The words "other instruments of writing," therefore, must be held to mean other instruments of the same kind or class as deeds and mortgages.

In the case of *Banker* vs. *Caldwell*, 3 Minn. 103, the following definition of a map was given:

> "A map is but a transcript of the region which it portrays, narrowed in compass, so as to facilitate an understanding of the original. It may be said to be an abstract of the original."

This definition was quoted with approval in the case of *Burke* vs. *McCowen*, 115 Cal. 481, 47 Pac. 367. In the Burke case the following definition of a plat, taken from the case of *McDaniel* vs. *Mace*, 47 Iowa, 510, was also quoted with approval:

> "A plat is a subdivision of land into lots, streets, and alleys, marked upon the earth, and represented on paper."

I think it is clear that maps or plats can hardly be said to be instruments of writing like deeds and mortgages, especially from the standpoint of recording such instruments. As above pointed out, maps are not *written* in the ordinary acceptation of the verb "write," and it would seem that the Legislature would not speak of recording a map or plat in "handwriting." Obviously, it is impossible to "typewrite" a map or plat. And because of the practical difficulties, it seems quite apparent that the Legislature did not contemplate that maps or plats should be recorded by "printing" each individual map or plat presented for record. The cost of so recording such instruments would be prohibitive.

For these reasons I conclude that while the Legislature has, by Section 2759, General Code, directed that deeds, mortgages and other like instruments must be recorded in handwriting, typewriting or printing, it has made no provision as to how maps and plats shall be recorded, other than the general direction contained in Section 2757, General Code, to the effect that the recorder shall keep a record of plats, in which maps and plats entitled to record, shall be recorded. This being true, the method employed in recording maps and plats must be kept to the sound discretion of the recorder.

This construction is supported by the provisions of Sections 2778 and 2779, General Code, respectively fixing the fees for recording deeds and mortgages and the fees for recording plats. These two sections were formerly contained in Section 1157 of the Revised Statutes, enacted May 12, 1902 (95 v. 606). While Section 1157, Revised Statutes, prescribed that a different fee should be charged in counties having a population of 35,000 or more, for the purposes of this opinion it is necessary only to quote that part of the section which read:

> "The recorder in counties which, by the last preceding federal census had a population less than thirty-five thousand, shall receive the following fees: For recording a mortgage, deed of conveyance, power of attorney, or other instrument of writing, twelve cents for every hundred words actually written, typewritten or printed, on the records, and ten cents for indexing the same, to be paid on the presentation of such instruments for record; for certifying copy from record, twelve cents for every hundred words; for recording assignment or satisfaction of mortgages, or discharge of a soldier, twenty-five cents; for every search of the record, without copy, fifteen cents; for recording any plat not exceeding six lines, one dollar, and for each additional line, five cents. * * *"

It will be noted that here the Legislature treated mortgages, deeds of conveyance, powers of attorney and other instruments of writing in one class and for obvious reasons prescribed that the fees for recording such instruments should be based upon the number of words actually written, typewritten or printed; while plats were treated as instruments of a different class, the fees for recording being based on the number of lines in the plat. For the purpose of the chapter in which the sections under consideration are found, Section 2780 defines what is meant by lines in these words:

> "* * * a line shall be such portion of the record as can be drawn by a continuous stroke of the pen regardless of intersecting lines; * * *."

You will note that the language here is that a line shall be such portion of the record as *can* be drawn and not such portion of the record as *is* drawn by a continuous stroke of the pen.

Section 2766-1, General Code, authorizing the acquisition, for the convenience of the various county officials, of certain records destroyed by fire or otherwise, and Section 2775, relating to the restoration of records, affecting real estate in the county, which have been in whole or in part destroyed, throw some light upon the meaning of the Legislature in the use of the words "all deeds, mortgages and other instruments of writing" as used in Section 2759. In Section 2776-1, this expression is used: "*plats*, records, abstracts, books, copies of records, abstracts of records existing or destroyed by fire or otherwise, or documents or instruments affecting the title of any lands, tenements or hereditaments within the county"; while in Section 2775 the phrase "*map, plat*, deed, conveyance, mortgage, power of attorney, or other instrument in writing or record in any proceeding authorized by law to be recorded, which affects real estate in the county, or the continuing rights of parties to such record" is employed. From the language of these sections it will be seen that when the Legislature intended the statutes to include maps and plats among the instruments in writing embraced in such statutes, express provision to that effect was made.

For the reasons above set forth, therefore, in specific answer to your question, it is my opinion that plans and maps of town lots, and of the sub-divisions thereof, and of other divisions or surveys or lands, entitled to record under the provisions of Section 2757, General Code, are not instruments of writing within the provisions of

Section 2759, General Code, directing that 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; and that maps and plats, entitled to record, may be recorded by photostatic process.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2206.

POLICE AND FIRE DEPARTMENTS—VILLAGES—CITIES—PENSION FUNDS—WORKMEN'S COMPENSATION—RIGHTS TO PARTICIPATE DISCUSSED.

SYLLABUS:

1. *Regular members of lawfully constituted police and fire departments of* villages, *under any appointment or contract of hire, are employes within the Workmen's Compensation Act, regardless of whether or not the village maintains a policemen's or firemen's pension fund; and such members, who are injured in the course of their employment, are entitled to participate in the state insurance fund, as are the dependents of such members, where death results from injuries received in the course of the member's employment.*

2. *The Workmen's Compensation Act was intended to provide a speedy and inexpensive remedy as a substitute for previous unsatisfactory methods and such act should be liberally construed in favor of employes.*

3. *Where an enacting clause is general in its language and objects and a proviso is afterwards intruduced, such proviso is to be strictly construed and no case is to be taken out of the enacting clause, which does not fall fully within the terms of the proviso.*

4. *Regular members of lawfully constituted police and fire departments of* cities, *under any appointment or contract of hire, may receive compensation from the state insurance fund for injuries received in the course of their employment, except in cases where the injured policemen or firemen are legally qualified and actually entitled to participate in any local policemen's or firemen's pension fund, established and maintained by municipal authority under existing laws.*

5. *In case of the death of regular members of lawfully constituted police and fire departments of* cities, *under any appointment or contract of hire, resulting from injuries received in the course of their employment, the dependents of such members may participate in the state insurance fund, unless such dependents are legally qualified and actually entitled to receive death benefits from a local pension fund, established and maintained by municipal authority under existing laws.*

6. *Where regular members of lawfully constituted police and fire departments of municipalities are injured in the course of their employment, resulting in temporary total disability, if such municipalities continue to pay the injured policemen of firemen their regular wages, during the period they are off duty because of their injuries, no loss in the way of compensation is sustained on account of such injuries and there can be no compensation out of the state insurance fund therefor, although such injured policemen or firemen are entitled to receive compensation from the state insurance fund, for medical, nurse and hospital services and medicine, unless thay are legally qualified and actually entitled to participate in a local pension fund, established and maintained by municipal authority under existing laws.*

7. *Where the lawfully constituted police department of a municipality consists of a chief of police and a given number of patrolmen, and one of said patrolmen, who was*