

view of the duties and powers which are cast upon such an officer, it must be concluded that such a member is a municipal officer.

I realize that in view of the facts stated by the mayor it would seem to be a harsh rule, and regret that the decisions compel me to the conclusion that a contract such as is under consideration is in violation of the provisions of Section 3808, General Code. Nevertheless, the legislative policy of this state is clearly established to the effect that a municipal officer may not enter into contracts with the municipality not only by reason of the provisions of Section 3808, *supra*, but also by the penal provisions of Sections 12910 and 12912, of the General Code.

In specific answer to your inquiry, you are advised that a member of a city planning commission is a municipal officer, and under the provisions of Section 3808, General Code, and the decision of the Supreme Court in the case of *Wright vs. Clark, supra*, such member may not legally enter into a contract for the construction of an addition to a municipal hospital.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2068.

COUNTY RECORDER—FEE FOR MAKING MARGINAL REFERENCE TO AN ASSIGNMENT ON ORIGINAL RECORD OF LEASE UNAUTHORIZED.

SYLLABUS:

A county recorder has no authority to make a charge for making a marginal reference to an assignment on the original record of a lease.

COLUMBUS, OHIO, July 8, 1930.

HON. LEE D. ANDREWS, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—Your recent communication reads:

"I wish to submit to you two questions involving the work of the county recorder.

1. The law does not require a marginal reference of an assignment of a lease to be made. However, this marginal reference is very important and should be made. Can this reference be made without the authority of the person making the assignment and be charged to that person?

2. It has been custom in this county to charge a fee of 25c for entering this marginal reference of assignment of a lease on the original record of said lease. Upon examining the law with reference to this matter, I find that the law does not describe any certain amount to be paid for this service. I have learned that other counties make a similar charge of 25c and some charge a less amount for this service. Is it legal to charge a fee of 25c for making these marginal references?"

As suggested in your communication the law does not require a marginal reference of an assignment of a lease. There are provisions of the statutes which require the assignment and release of mortgages to be copied upon the margin of the record and expressly provide that for such service a fee of twenty-five cents (25c) shall be charged by the recorder. There is no similar provision with reference to marginal

references with respect to an assignment of a lease. It is a well established principle of law in this state that a public officer may not collect fees except such fees as are expressly authorized to be collected by statute.

In my Opinion No. 1668, issued under date of March 25, 1930, it was pointed out that there was no authority of law authorizing a recorder to charge twenty-five cents (25c) for making a marginal reference to an assignment which included property involved in a number of separate leases. Said opinion held, as disclosed by the syllabus:

"Where the owner of a number of oil and gas leases assigns his interest therein to another in one instrument, such instrument is included in the term 'other instrument of writing' within the provisions of Section 2778 of the General Code, and the recorder should charge twelve cents for each hundred words actually written for recording, and five cents for each grantor and each grantee therein for indexing said instrument."

I have made a study of the various sections of the Code with relation to the fees which a county recorder may charge, but am unable to find any authority therein contained for a charge such as that concerning which you inquire. The service of the recorder in placing the marginal reference upon the records is commendable and no doubt is of material assistance to those having occasion to make a search of the records. In its nature it is a form of indexing and Section 2728 of the Code has already prescribed a fee of five cents (5c) for each grantor and each grantee in connection with indexing. It is not in the nature of the services for which the charge of twelve cents (12c) for each hundred words may be made, for these services are in connection with recording various instruments and the marginal reference is not recording but merely a notation as to where the instrument may be found.

In view of what has been said I am of the opinion that a county recorder has no authority to make a charge for making a marginal reference to an assignment on the original record of a lease.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2069.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENTS IN STARK AND
UNION COUNTIES.

COLUMBUS, OHIO, July 8, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*