trolling Board certificate are accordingly hereby approved by me and the same are herewith returned to the end that a proper voucher may be prepared covering the purchase price of this property.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3251.

RECORDER—ALTERATION OF ERRONEOUS OR INCOMPLETE RECORD BY COUNTY RECORDER.

SYLLABUS:

1. *A county recorder who has made an erroneous or incomplete record, may, while in office or after reelection to the same office, alter or complete such record to conform to the original instrument. However, such recorder is not authorized to alter or correct errors in the record made by a predecessor in office.*

2. *A county recorder may not accept an original instrument, which had previously been recorded improperly, for re-recording and remit the fee to be charged to the parties presenting the instrument for record.*

COLUMBUS, OHIO, September 26, 1934.

HON. RAY B. WATTERS, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—Receipt is acknowledged of a recent communication from your assistant, C. B. MacDonald, as follows:

> "The County Recorder is faced with a problem in his office in reference to mistakes which have occurred in the past in the recording of documents in his office. Will you kindly render an opinion as to whether or not the County Recorder has authority to correct errors appearing in his records?
>
> This question is directed only to errors about which there is no question. The errors generally involve instruments which have been on record for a number of years. By comparing the original instrument with the record, it can be clearly ascertained that an error was made in the original recording of the instrument.
>
> In the event that your opinion is that such errors cannot be corrected, would the Recorder be permitted to accept the original instrument for re-recording, and remit the fee to be charged?
>
> Some of these instances involve home owners' loans, and accordingly, it would be greatly appreciated if we could have your opinion at an early date."

Section 2759 of the General Code reads in part as follows:

> "The county recorder shall record in the proper record * * * all deeds, mortgages, or other instruments of writing required by law to be recorded, presented to him for that purpose. * * *"

It is stated in Ohio Jurisprudence, Vol. 35, page 93:

> "It is incompetent for a public officer to undo what he has once done; when he has done his duties, he is functus officio and has lost his power over the subject. It follows then that a public officer has no authority to change an instrument that has been filed with him. So, a recorder, as soon as he has recorded the instrument left with him for record, is powerless to change it, although he has been requested and authorized to do so by the parties to the instrument."

In the foregoing text the case of *Youtz* vs. *Julliard, et al.* is cited, the second and third paragraphs of the syllabus of which case read as follows:

> "2. The recorder has no authority to change a record of a mortgage after it has once been duly recorded, even if requested and authorized to do so by the parties.
>
> 3. An alteration on the record of a mortgage, made by a recorder after the mortgage has been duly recorded, or a memorandum made by him on the margin of such record as to such alteration, is void."

In the above case, a mortgage was left for record describing the property therein as Lot "B". This mortgage was duly recorded and thereafter the parties to said mortgage discovered that a mistake had been made in writing it, that the mortgagor did not own Lot "B", but did own Lot "A" and that Lot "B" had been written in said mortgage instead of Lot "A", by a mutual mistake of all parties, that, thereafter, the mortgagor and mortgagee signed and sealed a written request directed to the recorder, authorizing him to correct the said mistake on the record of said mortgage. Upon receipt of this writing, the recorder erased the letter "B" from the record of said mortgage and substituted in lieu thereof the letter "A", and at the same time wrote a memorandum on the margin of the page in which he stated why and by what authority he had changed the record from "B" to "A". The court held therein that the recorder had no authority to change "B" to "A" or to write his memorandum upon the margin for the reason that the written request directed to him by the parties to said mortgage was not an instrument subject to record.

Inasmuch as the facts in the above case are dissimilar to the ones presented in your inquiry, it can hardly be said that the finding of the court in said case is dispositive of the question presented herein. The Youtz case, of course, would impel the conclusion that when a defective or improperly executed instrument is left for record and said instrument is accurately recorded, the recorder is thereafter without authority to change or alter his records to conform to any correction which may have been made in the instrument subsequent to the time it was recorded in its original form.

The question presented by your inquiry, however, contemplates only errors made by the recorder in the recording of an instrument, and to take the position that under the authority of the Youtz case a recorder is precluded from correcting such error, is untenable. Even though county recorders come within the general rule that county officers have only such powers as are given them expressly or by implication, by statute, and in view of the absence of statutory authority to correct records it must be borne in mind that to record an instrument is to have an exact copy of the same entered in the records of the office designated by law,

and that the statute specifically enjoins upon a recorder the duty to record instruments which are presented to him for that purpose.

It would appear, therefore, that if through oversight or mistake a recorder makes an incorrect record, it is his duty as such officer, whenever he discovers such mistake, to correct it in the record, so that the record shall speak the facts correctly.

To take the position, however, that a recorder may at any time, without limitation, alter the records of his office, might establish a doctrine that would in practice, in some cases, work dangerous consequences to the land titles of the county. In many jurisdictions, it is held that a clerk may amend or correct his records, but the rule seems to be well established that the correction must be made by the officer who committed the error. *Baker* vs. *Webber,* 102 Me. 414; *Welles* vs. *Battelle,* 11 Mass. 477; *Mott* vs. *Reynolds,* 27 Vt. 206; *Boston Turnpike Company* vs. *Pomfret,* 20 Conn. 590; *Gibson* vs. *Bailey,* 9 N. H. 168.

In the case of *Hartwell* vs. *Littleton,* 13 Pickering (Mass.) 229, it was held that:

> "The clerk not only knows the fact in relation to which the amendment is to be made . . . but he still enjoys the confidence of the town, is by their vote entrusted with the custody of their records, and is held responsible for their purity and correctness under the sanction of an official oath and all such other guards as the law has thought it necessary to prescribe in the case of a clerk actually in office. The intervening election is substantially a continuance of the clerk in the same office."

From the above, it would therefore appear that a recorder who has made an erroneous or incomplete record may, while in office or after reelection to the same office, alter or complete such record according to the truth.

Coming now to your second question, it has been previously stated in this opinion that a county recorder, like other public officers, possesses only such powers as are granted by the statutes. An examination of the General Code discloses no authority for a county recorder to remit to a person presenting an instrument for record the statutory fees set forth therefor. On the contrary, section 2778, General Code, states:

> "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* or upon the application for any certified copy of the record." (Italics mine.)

Section 2977, General Code, provides:

> "All the fees, * * * collected or received by law as compensation for services by a county * * * recorder, shall be so received and collected for

the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided."

Obviously, section 2778, General Code, supra, makes it mandatory that the county recorder charge and collect the proper fees when an instrument is presented for record and section 2977, General Code, makes it mandatory that such fees be paid into the county treasury.

Summarizing, it is my opinion that:

1. A county recorder who has made an erroneous or incomplete record, may, while in office or after reelection to the same office, alter or complete such record to conform to the original instrument. However, such recorder is not authorized to alter or correct errors in the record made by a predecessor in office.

2. A county recorder may not accept an original instrument, which had previously been recorded improperly, for re-recording and remit the fee to be charged to the parties presenting the instrument for record.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3252.

POOR RELIEF—PAYMENT OF INDIGENT'S WATER BILLS FROM STATE EMERGENCY RELIEF FUND.

SYLLABUS:

The State Relief Commission, may if the City of Columbus is unable to furnish necessary and adequate relief for its indigent persons in the way of payment of their water bills, grant funds from the State Emergency Relief Fund to such subdivision for such purpose. However, there is no authority to pay out of the poor relief funds of the subdivision, nor of the State Emergency Relief Funds, water bills contracted by non-indigent property owners even though indigent tenants are occupying the premises owned by non-indigent persons.

COLUMBUS, OHIO, September 26, 1934.

The State Relief Commission of Ohio, Columbus, Ohio

GENTLEMEN:—I am in receipt of your communication which reads as follows:

"In the city of Columbus the water works system is a publicly owned utility. The city charter provides that the Director of Service shall make such assessments against users of water 'as will fully cover cost of service'.

Among the delinquent users of water are a large number of property-owners who are unable to collect the rents from their tenants, and who are permitting indigent tenants to occupy their property by sufferance, or who have arrangements by which tenants perform some repair service in exchange for the use and occupancy of the property. In some of these cases the landlords have ordered the water shut off, and