

716

RECORDER, COUNTY—AUTHORIZED TO CHARGE TOTAL FEE OF FIFTY CENTS TO FILE AND CANCEL CHATTEL MORTGAGES—CHATTEL MORTGAGE FILED BEFORE EFFECTIVE DATE, SECTION 7572 G. C. AS AMENDED, THIRTY CENTS FILING FEE PAID, A FEE OF TWENTY CENTS AUTHORIZED TO CANCEL MORTGAGE—TOTAL FEE FIFTY CENTS MAY BE OBTAINED TO FILE AND CANCEL CHATTEL MORTGAGE—SECTION 8572 G. C.—S. B. 247, 99TH GENERAL ASSEMBLY.

SYLLABUS:

Under the provisions of Section 8572, General Code, as amended by Senate Bill No. 247 of the Ninety-Ninth General Assembly, effective September 7, 1951, the county recorder is authorized to charge a total fee of fifty cents for filing and canceling chattel mortgages, and when a chattel mortgage is presented for cancellation, which chattel mortgage was filed before the effective date of Section 8572 as amended, and upon which a filing fee of thirty cents has been paid, the county recorder is authorized to charge a fee of twenty cents for canceling such chattel mortgage, thus obtaining a total charge of fifty cents for filing and canceling.

Columbus, Ohio, September 6, 1951

Hon. Robert D. Schuck, Prosecuting Attorney
Hancock County, Findlay, Ohio

Dear Sir:

Your request for my opinion reads in part as follows:

"Would you please give me your opinion as to what fee, if any, on September 7, 1951 and thereafter, a county recorder is to charge for the cancellation of a chattel mortgage filed previously to that date."

As you point out in your letter, this question developed as a result of the amendment by the Ninty-ninth General Assembly of Section 8572, General Code. Section 8572, supra, before it was amended, read as follows:

"For services in respect of 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; for cancellation of a filed chattel mortgage, fifteen 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."

As amended, effective September 7, 1951, Section 8572 reads as follows:

"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 and canceling each instrument or copy, whether on the original filing or refiling, a total of fifty 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. In consideration of the foregoing fees, the county recorder shall, without any further charge, cancel any of the above filed instruments upon receipt of the proper authority."

The provisions of the repealed Section 8572 were clear. The county recorder was authorized to charge a fee of thirty cents for the filing of a chattel mortgage, and a fee of fifteen cents for the cancellation of a chattel mortgage. The provisions of Section 8572, *supra*, as amended, are also clear as to chattel mortgages filed after the effective date of the act. The county recorder is authorized to charge a total fee of fifty cents for filing and canceling a chattel mortgage, and the last sentence of this section has the effect of making this fee payable when the chattel mortgage is filed. Cancellation of such an instrument must be done without further charge. There remains, however, the question raised by your request as to what fee, if any, must be charged for a cancellation, after the effective date of this act, of a chattel mortgage filed before the effective date of this act.

It goes without saying that the authority of a public officer to charge fees for services rendered must be derived from statute. As one of my predecessors pointed out in Opinion No. 3617, *Opinions of the Attorney General for 1941*, p. 206:

“It is an elementary principle of law that public officers possess only such powers as are expressly conferred by the Legislature or which may be implied from the express grants. It follows, therefore, that a county treasurer may pay and *the county recorder may receive* only those fees for ‘recording, filing, indexing and canceling’ which have been provided by law.”

(Emphasis added.)

Failure of the Legislature to authorize a fee for a given service will not, of course, relieve the public officer from performing those duties required of him. *Clark v. Commissioner*, 58 Ohio St., 107; *Commissioners of Butler County v. Welliver*, 12 O. C. C., 440.

Senate Bill No. 247, which amended Section 8572, *supra*, expressly repealed the previous Section 8572, General Code, and it is worth pointing out that the saving provisions of Sections 26 and 26-1, General Code, do not appear to be applicable in this case so as to retain any provisions of the repealed Section 8572, *supra*. Nor can I find any other statutory provision authorizing the county recorder to charge a fee for the cancellation of a chattel mortgage. If, therefore, a fee is authorized for the cancellation of a chattel mortgage filed before the effective date of this act, September 7, 1951, that fee must be authorized by the language of Section 8572, *supra*, as amended.

I think it wise to point out the apparent intention of the Legislature in amending this section of the Code. It is common knowledge that under the provisions of the repealed Section 8572 very few chattel mortgages were ever cancelled. Instead, it has been the common practice of the mortgagee to permit such mortgages to remain on deposit with the recorder, uncanceled, even though the debt secured by such mortgage had already been satisfied. Upon the expiration of three years from the date of filing, such mortgages, by operation of Section 8565, General Code, became void as against subsequent purchasers or mortgagees in good faith, if not refiled, but such mortgages could not be destroyed until another six years had expired. By this process the chattel mortgage, in effect, was "cancelled" by operation of law without a formal cancellation and the payment of the required cancellation fee. Obviously, it was this loophole in the collection of the cancellation fee that the Legislature intended to plug. It did so by requiring a total fee for both filing and cancellation payable at the time of such filing. It provided for a cancellation, in certain cases, without additional payment.

However, this gratuitous service was not to be rendered at the expense of the public, but was to be conditioned upon a substantial increase in the initial filing fee. The language of the last sentence of Section 8572, as amended, "In consideration of the foregoing fees, the county recorder shall without any further charge * * *", certainly spells out this condition.

Bearing in mind this intention of the Legislature, that the free cancellation should not be at the expense of the public but should be dependent upon an increased filing fee, and bearing in mind also that statutes should be construed in such a way as to operate for the welfare of the general public, I conclude that the Legislature, in amending Section 8572, supra, did not intend that the public should bear the expense of a cancellation of a chattel mortgage filed before the effective date of this act.

The language of the last sentence of Section 8572, as amended, which language is set out above, provides for a free cancellation only "in consideration of the foregoing fees". The effect of this language on the situation which you have presented is two-fold: (1) Inasmuch as the foregoing fee of fifty cents has not been paid, a further charge for cancellation of the instrument is not prohibited; and (2) the Legislature, by this language, has indicated that in cases where the total fee of fifty cents had not been paid, a further charge for cancellation should be made.

What further charge is authorized? It is my opinion that the Legislature foresaw the very situation presented in your request. In establishing the fee for "filing and canceling" the Legislature described the authorized fee as a "total" fee. Obviously, the Legislature contemplated a situation where part of the fee had been paid for filing and a further charge was to be paid for cancellation, the "total" of both charges to amount to fifty cents. In this situation which you present, a fee of thirty cents has been paid at the time of filing of the chattel mortgage under the provisions of the repealed Section 8572. Although, as I have stated, in a situation where a total fee of fifty cents has not been paid, the Legislature intended that a further charge should be made for the cancellation, it is equally apparent that the further charge should not amount to fifty cents; rather the total of the charge for filing and for cancellation should amount to fifty cents. In the present case, then, the only way by which a reasonable construction can be given the word "total" is by holding that thirty cents having been paid for filing, the county recorder is authorized to charge an additional twenty cents for canceling the chattel mortgage, thus obtaining "for filing and canceling * * * a total of fifty cents."

It is therefore my opinion that under the provisions of Section 8572, General Code, as amended by Senate Bill No. 247 of the 99th General Assembly, effective September 7, 1951, the county recorder is authorized to charge a total fee of fifty cents for filing and canceling chattel mortgages and that when a chattel mortgage is presented for cancellation, which chattel mortgage was filed before the effective date of Section 8572 as amended, and upon which a filing fee of thirty cents has been paid, the county recorder is authorized to charge a fee of twenty cents for canceling such chattel mortgage, thus obtaining a total charge of fifty cents for filing and canceling.

Respectfully,

C. WILLIAM O'NEILL
Attorney General