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COUNTY RECORDER—FEE TO FILE SATISFACTION OF CHATTEL MORTGAGE—TWENTY-FIVE CENTS—SECTION 8572 G. C.—NOT AUTHORIZED TO MAKE SIMILAR CHARGE TO CANCEL CHATTEL MORTGAGE THERETOFORE FILED PURSUANT TO PROVISIONS, SECTION 8562 G. C.

SYLLABUS:

By virtue of the provisions of Section 8572, General Code, a county recorder is authorized to charge twenty-five cents for recording a satisfaction of a chattel mortgage theretofore recorded pursuant to the provisions of Section 8563, General Code. A similar charge, however, is not authorized for canceling a chattel mortgage theretofore filed pursuant to the provisions of Section 8562, General Code.

Columbus, Ohio, December 16, 1943.

Bureau of Inspection and Supervision of Public Offices,  
Columbus, Ohio.

Gentlemen:

Your request for my opinion reads:

“Section 8572 of the General Code, as amended by Amended Senate Bill No. 186, passed by the recent Legislature, providing certain fees to be charged by the County Recorder for services in respect to chattel mortgages, contains the following language:

‘ \* \* \* and for services not herein provided for, as are allowed by law to county recorders for like services.’

May we respectfully request your opinion upon the following question that has arisen among the recorders in the state:

May a county recorder, under this section charge the same fee for releasing or cancelling a chattel mortgage as is provided by law for releasing a real estate mortgage?”

You have directed attention to Amended Senate Bill No. 186, pursuant to which Section 8572 was recently amended. The passage of this bill also resulted in a change being made in the language of other legislative enactments relating to chattel mortgages which, I believe, should be considered before passing to an examination of the statute to which you have referred.

Section 8562, General Code, now reads as follows:

“The county recorder upon receiving such instrument shall endorse thereon the time of receiving it and its consecutive number, and enter in a book or on cards, (which shall be known as the chattel mortgage index) to be provided by the county, the names of all parties thereto, alphabetically arranged, with the number of the instrument, its date, the date on which it was so received, and the amount secured thereby as set forth in the sworn statement to be furnished therewith, which entry must be repeated, alphabetically, under the name of every party thereto. He shall also file the instrument in his office to be there kept for the inspection of all persons interested, unless deposited for recording under section 8563, General Code. In case said instrument is presented for refiling the officer receiving the same shall file, handle, number, index and treat it as an original filing. *When any chattel mortgage so filed is refiled, or, when a chattel mortgage, whether filed or recorded, is cancelled the date of such refiling or cancellation must be entered upon the margin of such chattel mortgage index opposite the original entry if not refiled, or opposite the last entry, if refiled.*” (Emphasis mine.)

It will be noted therefrom a duty is imposed upon the county recorder to enter the date of such cancellation upon the margin of the chattel mortgage index. However, there is no language in this section that specifies the form of or indicates what shall be contained in a cancellation. And I am not aware of any other statutory enactment that attempts to prescribe the form of cancellation. It would seem, therefore, that any instrument that clearly evidences the intention of the holder of a chattel

mortgage to extinguish or terminate the rights of the parties thereto would be sufficient to serve as a cancellation. The provision of the section, however, that defines the duty of the recorder with respect to a cancellation, would not, in my opinion, be applicable to chattel mortgages mentioned in the following statutory enactment, viz., Section 8563, which reads:

“A mortgage upon both real and personal property (but not upon personal property only) or a true copy thereof, may be deposited with the county recorder with the request that the same be recorded, in which case the county recorder must record it at the expense of the person making the request in a book to be provided by the county to be known as the chattel mortgage record; provided that if such instrument or the original of which such instrument is a true copy is or shall have been also deposited with the county recorder for recording as a real estate mortgage, he shall accept and index such instrument as a chattel mortgage as provided in section 8562, General Code, but in lieu of recording the entire contents thereof in the chattel mortgage record he shall record therein the names of all parties thereto, together with the sworn statement furnished therewith as required by section 8564 General Code and a reference to the volume and page at which the same is recorded as a real estate mortgage, and such recording shall constitute sufficient recording thereof for the purposes of this section.

The county recorders shall maintain a chattel mortgage index for chattel mortgages recorded under this section separate from the index for chattel mortgages filed or refiled.

Any mortgage upon both real and personal property filed with the county recorder before the effective date of this section, or a true copy thereof may be deposited for recording under this section.

When any chattel mortgage heretofore or hereafter filed shall be recorded the county recorder shall enter upon the margin of the chattel mortgage index opposite the original entry a notation that such mortgage has been withdrawn from filing for the purposes of recording. Such withdrawal and recording shall be without prejudice to the lien and rights of the mortgagee obtained as a result of such filing.

*Chattel mortgages recorded in accordance with the provisions of this section may be assigned, released and satisfied in the manner provided in sections 8546 to 8556, General Code, which sections shall also apply to such chattel mortgages. An assignment, release or satisfaction of such instrument as a mortgage upon the real property therein described shall operate also as an assignment, release or satisfaction of the mortgage upon the chattel property unless otherwise expressed.*

The provisions of section 8565, General Code, shall not apply to chattel mortgages recorded as provided in this section. Such mortgages shall be subject to and governed by the provisions of section 8546-2, General Code." (Emphasis mine.)

At this point I wish to call attention to the fact that the statute just quoted refers to the "satisfaction" of such a mortgage rather than to a "cancellation".

Section 8572, General Code, to which you have referred, provides:

"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 such 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; 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.*" (Emphasis mine.)

In your inquiry you have quoted only a portion of said Section 8572. It would appear that my opinion is being sought especially with respect to whether or not the words "and for services not herein provided for," which have been incorporated in said recently amended section, authorize the charging of a fee for *releasing or canceling* a chattel mortgage.

In reaching my conclusion, I cannot ignore the other provisions of Section 8572. I feel, therefore, that before proceeding to an examination of the language thereof, to which you have referred, I must determine whether or not a cancellation is a "sworn statement, credit, assignment or *any other document*" for which the recorder is specifically authorized to charge twenty-five cents "for attaching to any filed instrument". As I have heretofore pointed out, there is no statutory enactment which prescribed the form of a cancellation. Certainly it does not have to be sworn to and, therefore, when the General Assembly used the words "*sworn statement*," it is manifest that it did not thereby intend to refer to a cancellation. It is equally clear that by no stretch of the imagination could a cancellation be considered a "credit" or an "assignment". This leaves as the final matter for consideration the question of whether it could be regarded as "*any other document*".

A chattel mortgage that has been filed may be surrendered by the recorder when he is presented with a cancellation thereof. Whether the document is thereupon destroyed or otherwise disposed of is of little conse-

quence. So far as the recorder's records are concerned, there is nothing that can be examined or inspected that will disclose specifically what was contained therein. The only information available is such as may be obtained from the chattel mortgage index. But this is not the situation when a sworn statement, credit or assignment is attached to a chattel mortgage. Such instrument still remains in existence and may be inspected. Consequently, in considering what is meant by the words "any other document" which appears in Section 8572, *supra*, I am of the opinion that the General Assembly intended thereby to mean an instrument that does not bring about a termination of the rights of the parties. I must, therefore, conclude that by the insertion of this language in the section under consideration, the General Assembly did not mean to authorize the recorder to charge twenty-five cents for canceling a chattel mortgage.

I turn now to a more detailed consideration of the following appearing in Section 8572, *supra*, viz.:

"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 connection therewith you have referred to the charges of county recorders for *releasing or canceling* a real estate mortgage. My attention has not been directed to the specific statutory enactments with reference thereto, but I am assuming you had in mind Section 8549, General Code, which reads:

"The recorder will be entitled to demand and receive the sum of twenty-five cents, and no more, for recording such satisfaction, or permitting it to be recorded by the mortgagee."

I believe attention should also be called to Section 8548, General Code, which relates to the duty of the recorder when recording a mortgage and which reads:

"When recording a mortgage, county recorders must leave space on the margin of the record for the entry of satisfaction, and record therein the satisfaction made on the mortgage, or permit the owner of the claim secured thereby to enter therein such satisfaction. Such record shall have the same force and effect as the record of a release of the mortgage."

I think it might be well to note that these two sections have application to mortgages that are *recorded* and in this connection it is significant that the General Assembly has referred to the *satisfaction* thereof. At no place

in either legislative enactment is there any mention of the cancellation of such document.

It seems to me that a consideration of that portion of Section 8572, above quoted, necessitates my having to determine whether or not a county recorder is authorized to make a charge for :

(a) *satisfying* a chattel mortgage *recorded* pursuant to the provisions of Section 8563, supra ;

(b) *canceling* a chattel mortgage *filed* pursuant to the provisions of Section 8562, supra.

In connection with the first question, I call attention to the provisions of Section 8563 as it read prior to its amendment by virtue of Amended Senate Bill No. 186, viz.,

“If the party depositing the instrument desires to have it recorded, the officer must record it at the expense of the person making the request, in a book to be provided by the county. He also shall enter upon the margin of such record when the instrument is refiled any credit or statement placed thereon after it was recorded. When it has been satisfied, the party holding it forthwith shall notify the officer who made the record thereof, who without delay, *must note such cancellation and satisfaction upon the margin of the record without charge therefor.*” (Emphasis mine.)

A comparison thereof with the present legislative enactment will, of course, disclose that extensive changes were made in its terms so that reference to said former statute is of little assistance in now endeavoring to arrive at the legislative intent. I might call attention, however, to the fact that the section as presently in effect makes no reference to the fact that the recorder “*must note such cancellation and satisfaction upon the margin of the record without charge therefor.*”

While this above quoted language seems plain to me, I find that one of my predecessors had occasion to render an opinion with respect thereto. See Opinions of Attorney General for 1933, Vol. II, page 1393, the second paragraph of the syllabus reading :

“By reason of the provisions of Section 8563, General Code, the county recorder has no authority to demand or receive a fee for noting the cancellation and satisfaction of a chattel mortgage upon the margin of the record where it has been recorded pursuant to the provisions of such section.”

As I have pointed out, the word "cancellation" has been omitted from the section as now in effect. That this word probably meant something other than a satisfaction seems evident from the fact that the statute heretofore referred to a "cancellation *and* satisfaction". The words are frequently used interchangeably as denoting that an instrument is no longer possessed of legal vitality. But I feel that we must keep in mind that there is a difference in their meaning. The word "cancel" is defined in Webster's New International Dictionary as follows:

"To annul or destroy; to revoke or recall."

"Satisfy" is therein defined as:

"To answer or discharge as a claim, debt, legal demand or the like; to give compensation for; to pay off; to requite; as to *satisfy* a claim or an execution."

Technical niceties in language should not be resorted to to thwart the clear purport of a statute. However, when the General Assembly used the word "cancel" in Section 8562, *supra*, and then said that a chattel mortgage, recorded pursuant to the provisions of Section 8563, *supra*, may be "satisfied", this choice of language was no doubt not inadvertent but must have been made for some reason.

I might direct attention to the case of *Chattanooga Building & Loan Assn. v. Echols*, 125 Ala. 548, So. 975, wherein the court had occasion to hold, as disclosed by the second paragraph of the syllabus, that:

"When one has paid off a mortgage given to a building and loan association, writes a letter to the mortgagee, in which, after stating that he has paid off the mortgage then says: 'You neglected to relinquish your claim to mortgage on property. Please *cancel* the mortgage and stock', such letter is not sufficient as a request *to enter the fact of payment or satisfaction* on the margin of the record of the mortgage; and does not authorize the recovery of the statutory penalty upon the mortgagor's failure to enter *satisfaction* on the margin of the mortgage." (Emphasis mine.)

This holding was cited with approval in the recent case of *International Harvester Co. v. Fulmer*, 232 Ala. 112 (decided in 1936), wherein the court stated at page 113 that:

"These cases—(referring to certain decisions set forth above)—do not conflict with *Chattanooga Building & Loan Assn. v. Echols*, 125 Ala. 548, 27 So. 975, where the notice was merely to cancel the mortgage. *It was held that a cancellation of the mort-*

*gage does not mean its satisfaction on the record.” (Emphasis mine.)*

I am therefore of the belief that by the use of the word “satisfaction” in Section 8563, *supra*, the General Assembly meant thereby to refer to the language appearing on a chattel mortgage which is to be placed on record and which gives notice of the fact that the rights of the parties to the instrument have been extinguished and the document is no longer of any legal force and effect. It is therefore my opinion that by reason of the provisions of Section 8572, General Code—especially when considered in the light of cognate sections—a county recorder is authorized to charge twenty-five cents for recording a satisfaction of a chattel mortgage that has been recorded. This interpretation of said section permits giving effect to that portion thereof that reads, “and for services not herein provided for” a recorder is authorized to charge the fees “as are allowed by law \* \* \* for like services.”

In reaching the above conclusion, I wish it understood that I do not here overrule the aforementioned opinion rendered in 1933 by the then Attorney General. I subscribed to the correctness of his views which, of course were predicated on the language appearing in the then Section 8563, which is not now found therein.

What can be said with reference to the right of a recorder to make a charge of twenty-five cents for canceling a chattel mortgage that has been filed? Does the same conclusion necessarily follow? It must be conceded that the General Assembly had the right to impose on the recorder an obligation to cancel a chattel mortgage by making the necessary entry upon the margin of the chattel mortgage index. And if it saw fit to provide no fee for such service, he is, nevertheless, required to render the same. I am not without precedent for the proposition that on previous occasions the General Assembly has enacted legislation which requires a public officer to render gratuitous services.

In 1920, the then Attorney General held, as disclosed by the second paragraph of the syllabus of his opinion found in *Opinions of Attorney General for 1920, Vol. I, p. 517*, that:

“The fees chargeable by the clerk of courts are fixed by statute, and the legislature in the language used in section 1295-29 relating to the fee for such registry, *failed to provide any fee for such purpose*. However, the failure of the fee does not excuse the said clerk of courts from making said registry.” (Emphasis mine.)

To similar effect see also *Opinions Attorney General for 1929, Vol.*



II, p. 1259; Opinions Attorney General for 1933, Vol. I, p. 96; Opinions Attorney General for 1941, p. 206; and *Commissioners v. Welliver*, 12 O. C. C. p. 440.

In considering your question I have not overlooked examining former Section 8572. The matter of whether or not a recorder was heretofore entitled to charge twenty-five cents for canceling a chattel mortgage seems not to have been passed upon by any court or any of my predecessors, and I seem not to have had occasion to consider the question. This is probably so because of the fact that the language of said section is such that there can be little doubt that no charge was authorized thereunder. The current sections bear little resemblance to the former enactment and consequently reference to the latter, for the purpose of endeavoring to ascertain the legislative intent, affords little help. While the matter is not entirely free from doubt, I am of the opinion that a recorder is not authorized to charge a fee for canceling a chattel mortgage that was theretofore presented for filing.

Therefore, in specific answer to your question, it is my opinion that:

By virtue of the provisions of Section 8572, General Code, a county recorder is authorized to charge twenty-five cents for recording a satisfaction of a chattel mortgage theretofore recorded pursuant to the provisions of Section 8563, General Code. However, no fee may be charged by a recorder for canceling a chattel mortgage theretofore filed pursuant to the provisions of Section 8562, General Code.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.