

OPINION NO. 66-076

Syllabus:

Any instrument otherwise eligible for record, containing a statement in the following form, "This instrument was prepared by (with a name inserted)" must upon presentation be accepted by the County Recorder for filing and recording.

To: Angus B. Wilson, Brown County Pros. Atty., Georgetown, Ohio
By: William B. Saxbe, Attorney General, April 8, 1966

Your request for my opinion reads as follows:

"The Brown County Recorder contacted me in regard to two deeds which were presented to him for recording which stated: 'This instrument was prepared by _____.' The person that prepared these deeds was not an attorney nor a governmental agency, and the Recorder asked for my opinion under Section 317.11, [sic] of the Revised Code of Ohio whether or not the Recorder should refuse to accept said deeds for recording.

"Brown & Sons vs. Honaberger, 171 Ohio State 247, was in regard to a mechanic's lien suit which indicates that the instrument should state who prepared the same and also indicated that the statute was passed in regard to the unauthorized practice of law.

"I advised the Recorder to receive the instruments as the statute does state that the instruments shall be received by the Recorder for filing and further stated that the name of the person or other governmental agency who prepared said instrument should appear at the conclusion of such instrument.

"The Bar Association of Brown County did pass a resolution several months ago stating that this was an unauthorized practice of law, and I assume that the same should be taken up with the State Bar Association and with the Brown County Bar Association in regard to the unauthorized practice of law.

"Please give me an opinion at your earliest convenience."

Upon further inquiry, I was advised that names of persons purporting to have prepared the deeds in question were written thereon pursuant to the requirement of Section 317.111, Revised Code.

Section 317.111, Revised Code reads as follows:

"No instrument by which the title to real estate or personal property, or any interest therein or lien thereon, is conveyed, created, encumbered, assigned or otherwise disposed of, shall be received for record or filing by the county recorder unless the name of the person who, and governmental agency, if any, which, prepared such instrument appears at the conclusion of such instrument and such name is either printed, typewritten, stamped, or signed in a legible manner. An instrument is in compliance with this section if it contains a statement in the following form: 'This instrument was prepared by (name).'"

"This section does not apply to any instrument executed prior to October 5, 1955, nor to the following: any decree, order, judgment, or writ of any court; any will or death certificate; any instrument executed or acknowledged outside of this state." (Emphasis added.)

Chapter 317, Revised Code, contains comprehensive and explicit instructions of the General Assembly to the Recorder of each county in the state. The recordability of any instrument which is in exact conformity to the statute, as is related above, is not to be questioned by the County Recorder.

Section 317.13, Revised Code, in so far as is pertinent to this point of law, is mandatory, and is as follows:

"The county recorder shall record in the proper record, in legible handwriting, typewriting, or printing, or by any authorized photographic process, all deeds, mortgages, plats, or other instruments of writing required or authorized to be recorded, presented to him for that purpose. * * *"
(Emphasis added.)

Certainly any instrument which conforms to the declared requirements of law is eligible for record and being so, must upon presentation be filed and recorded by the County Recorder pursuant to Sections 317.08 and 317.19, Revised Code, respectively.

As you well know, there are situations in which laymen may perform certain acts which amount to the practice of law without being in violation of Chapter 4705, Revised Code, prohibiting the unauthorized practice of law, or the Ohio Supreme Court's rules of practice, which practice was mentioned in Brown and Sons v. Honabarger, supra, which deals with the legal efficacy of a recorded instrument that did not contain the name of the person who prepared it.

Investigation of and determination of guilt in the former situation is a matter of simple criminal procedure, while the latter is handled by a Board of Commissioners on Grievances and Discipline, which was created by the Supreme Court.

It is, therefore, my opinion and you are advised that any instrument otherwise eligible for record, containing a statement in the following form, "This instrument was prepared by (name)" must upon presentation be accepted by the County Recorder for filing and recording.