

Upon examination of encumbrance record No. 662 submitted as part of the files relating to the purchase of said property, I find that the same has been properly executed and acknowledged and that the same shows that there is sufficient balance in the appropriation account to pay the purchase price of said property, which is the sum of Sixty Thousand, Six Hundred Eighty-three and 48/100 (\$60,683.48) Dollars.

Said warranty deed and encumbrance record are accordingly hereby approved and the same are herewith enclosed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3114.

REINDEXING OF DEED RECORDS—SOLE RIGHT OF COUNTY RECORDER
TO HIRE NECESSARY HELP FOR SUCH WORK.

SYLLABUS:

The reindexing of deed records is properly one of the duties of the county recorder's office, and the supervision of the same should be under his direction, which comprehends the right to employ the persons to be engaged in such work.

COLUMBUS, OHIO, April 2, 1931.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date which reads:

“There has been appropriated by the County Commissioners of Licking County a sum to be used in the Recorder's office for the reindexing of the deed records. This appropriation was not included in the regular salary fund.

The Commissioners and Recorder are unable to agree as to who has the right to hire the necessary help for the work, the Recorder claiming that as it is in his office he should have the right to employ and the Commissioners stating that as it is extra work and the appropriation was made in addition to the regular appropriation for help in the Recorder's office, that they should employ the necessary clerks for the work.

We shall appreciate very much your opinion as to who should make the necessary appointment.”

Your inquiry concerns “the reindexing of the deed records”. For the purposes of this opinion, I assume that you do not refer to the making and keeping of sectional indices as provided by Sections 2766 and 2767, General Code, which subject was reviewed in an opinion of my predecessor found in Opinions of the Attorney General, 1928, page 1804.

A consideration of your request requires a review of the various sections of the General Code relative to the duty of the county recorder in keeping and indexing various instruments in writing.

Section 2764, General Code, requires the county recorder to keep direct and reverse indices of all instruments received for record by him. In the latter part of the section it is provided that “whenever, in the opinion of the county commissioners, it becomes necessary to transcribe on account of its worn-out or incomplete condition any volume of such index now in use, the same shall be revised and transcribed to conform herewith.”

Section 2765, General Code, requires the county recorder to keep a daily register of deeds and mortgages.

Section 2774, General Code, reads as follows:

"When the records in the recorder's office, or any part of them, become defaced or injured, the recorder when directed so to do by the county commissioners, shall transcribe them into new books, which shall be as valid in law as the original record, and transcripts therefrom shall be received and taken as of the same force and effect."

Section 2479, General Code, states:

"When they deem it necessary, the county commissioners shall have any of the records or books in the office of * * * the county recorder, transcribed into other books, by the officers having charge thereof, and pay them therefor six cents per hundred words. * * *"

Section 2780, General Code, provides:

"For services directed to be performed by the county commissioners in transcribing the records of other counties, and for transcribing defaced or injured records, the recorder shall receive not exceeding six cents for each hundred words, each figure to count as one word for transcribing defaced or injured records of plats, not exceeding fifty cents for the first six lines and three cents for each additional line. * * * All compensation provided for in this section shall be paid out of the county treasury upon the allowance of the county commissioners and the warrant of the county auditor and shall be paid into the county treasury to the credit of the recorder's fee fund. The commissioners shall allow the recorder his necessary expenses in transcribing records in other counties."

The county recorder is charged by law with the duty of keeping four separate sets of records with proper indices to the same, a daily register of deeds and mortgages, transcribing records from other counties upon the order of the county commissioners, keeping sectional indices after the same are made, performing such duties as are required of him in the registration of land titles, and turning over to his successor the books and records of his office.

It is a necessary implication from the obligations imposed upon him that he be the custodian of the records for these purposes, and it follows in view of the duties involved that the county recorder has the authority to dictate the method in which the various indices be kept, and in order so to do it is necessary that the person or persons appointed for such work do the same under his direction.

To allow the county commissioners to select the necessary personnel for reindexing the records of the county recorder's office would be an encroachment upon the manner in which the functions of that independent office are to be discharged. As was stated at page 1806 of Vol. II, Opinions of the Attorney General for 1928:

"Each officer, within the realm of the duties of his office, is independent, yet each is dependent to some extent on the county commissioners, especially with respect to the furnishing of offices and supplies, and the providing of moneys for the payment of deputies and clerks, and other necessary expenses incident to the maintenance of the office."

An examination of the sections concerning the duties of the county commissioners

relating to their supervision over the recording of instruments discloses that they are authorized to let contracts for sectional indices when in their opinion such indices are needed. See Sections 2766 and 2767, General Code.

This is the only instance in which the legislature has evidenced an intent to allow county commissioners to provide for the making of records kept in the county recorder's office by a person or persons other than the recorder.

As county elective officers have only such powers as are granted by statute and such implied powers as are necessary to carry these express powers into effect, it is apparent that county commissioners, with the above noted exception, have no express or implied authority to dictate by whom records in the office of the county recorder should be copied.

It is therefore my opinion that the reindexing of deed records is properly one of the duties of the county recorder's office, and the supervision of the same should be under his direction, which comprehends the right to employ the persons to be engaged in such work.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3115.

COUNTY COMMISSIONERS—UNAUTHORIZED TO CONTRACT FOR A SURVEY OF OFFICE LAYOUT, ACCOUNTING SYSTEMS, ETC., FOR COUNTY OFFICES—OPINION NO. 2887, 1931, AFFIRMED.

SYLLABUS:

Opinion No. 2887, rendered January 30, 1931, affirmed.

COLUMBUS, OHIO, April 2, 1931.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"In your opinion No. 2887 of recent date rendered to this office, you advised us that it was not within the power of the county commissioners to contract for a survey of office layout, accounting systems, personnel, etc., of the various county offices.

At this time we wish to ask you to consider Section 2419 of the General Code of Ohio with reference to the inquiry covered by your aforesaid opinion. Section 2419 provides in part as follows:

'They (the county commissioners) shall also provide all the equipment, stationery and postage, as the county commissioners may deem necessary for the proper and convenient conduct of such offices, and such facilities as will result in expeditious and economical administration of the said county offices. * * * * *

May we respectfully call your attention to the fact that all physical equipment seems to be covered by the phrase—'They shall also provide all the equipment', leaving the phrase—'such facilities as will result in expeditious and economical administration of the said county offices' as surplusage unless it were to refer to something of the nature of our inquiry.

In view of the fact that the above quoted section was not mentioned in