

OPINION NO. 84-044**Syllabus:**

1. Where the county recorder elects to maintain two sets of records as set forth in R.C. 317.08(F), R.C. 1777.05 requires the recorder to maintain a separate register for the listing of the names of partners and partnerships listed in the partnership certificates filed in his office, and R.C. 1781.02 requires the recorder to maintain a separate book for the recording and indexing of certificates of limited partnership.
2. Where the county recorder elects to maintain two sets of records as set forth in R.C. 317.08(F), the recorder may, pursuant to R.C. 317.08, maintain a separate single volume for the indexing, keeping, and recording of, among other documents, notices of liens and notices of discharge of recognizances which he is required to maintain pursuant to R.C. 2937.27, or may maintain such notices in a book or record as otherwise required by R.C. 2937.27.

To: James R. Unger, Stark County Prosecuting Attorney, Canton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 31, 1984

I have before me your opinion request in which you ask the following questions:

1. Is the county recorder required to maintain a separate book or register for names of firms and persons who file fictitious partnerships under Section 1777.05 and is he required to maintain a separate book for the recording of limited partnerships as is provided in Section 1781.02, both of the Revised Code, when that public officer elects to keep two sets of books as is provided in Section 317.08(F) of the Ohio Revised Code?
2. Is the county recorder to maintain a separate record for

notices of recognizances and releases of recognizances as provided for in Section 2937.27 of the Ohio Revised Code when that public officer elects to keep two sets of books as is provided in Section 317.08(F) of the Ohio Revised Code[?]

The county recorder, as a creature of statute, has those powers and duties provided by statute. State ex rel. Preston v. Shaver, 172 Ohio St. 111, 173 N.E.2d 758 (1961); 1936 Op. Att'y Gen. No. 5383, vol. I, p. 451. For example, R.C. 317.13 imposes upon the county recorder the general duty of recording "all deeds, mortgages, plats, or other instruments of writing required or authorized to be recorded, presented to him for that purpose." In addition to recording various documents, the county recorder has a duty to maintain certain information by other means. See, e.g., R.C. 317.18 (direct and reverse indexes of names of both parties to all instruments received for record by recorder); R.C. 317.19 (daily register of deeds and daily register of mortgages); R.C. 317.20 (sectional indexes as required by the county commissioners). See also 1918 Op. Att'y Gen. No. 1437, vol. II, p. 1161 (syllabus) ("indexes required or authorized to be kept by a county recorder are not part of the record").

In order to answer your questions it is first necessary to discuss the duties of the county recorder required by R.C. 317.08. As set forth in 1984 Op. Att'y Gen. No. 84-031, except as provided in R.C. 317.08(F), R.C. 317.08 imposes a duty upon the county recorder to maintain five separate sets of records—deeds, R.C. 317.08(A); mortgages, R.C. 317.08(B); powers of attorney, R.C. 317.08(C); plats, R.C. 317.08(D); and leases, R.C. 317.08(E). Pursuant to R.C. 317.08(F), however, the five sets of records required in R.C. 317.08(A) through (E) may, in the alternative, be kept in only two separate sets of records. The "official records" book shall contain the instruments listed in R.C. 317.08(A), (B), (C), and (F) and, pursuant to R.C. 317.09(B), the instruments listed in R.C. 317.09(A). In the other set of records the county recorder is to maintain the instruments listed in R.C. 317.08(D).

You first question whether the county recorder is to maintain a separate book or register for the information which the recorder is required to keep pursuant to R.C. 1777.05 and R.C. 1781.02. R.C. 1777.05 states: "Every county recorder must keep a register of the names of firms and persons mentioned in the partnership certificates filed in his office, entering in alphabetical order the name of every such partnership, and of each partner interested therein." See R.C. 1777.02 (providing for the filing for record with the county recorder a certificate showing the names and residences of all of the members of a partnership by every partnership transacting business in this state under a fictitious name or under a designation not showing the names of persons interested as partners, and the recording and indexing of such certificates by the county recorder). Pursuant to R.C. 1777.05, a county recorder is required to maintain a register containing a listing of each partner and partnership which has filed a certificate in the county recorder's office pursuant to R.C. 1777.02. 1979 Op. Att'y Gen. No. 79-071.

R.C. 1781.02(A)(1) requires two or more persons desiring to form a limited partnership to sign and acknowledge a certificate which must set forth certain information concerning the partnership. R.C. 1781.02 further states:

(A) Two or more persons desiring to form a limited partnership shall:

. . . .

(2) File, for record, the certificate in the office of the county recorder of the county in which the principal place of business of the partnership is located. When the certificate is filed with the recorder of any county, he shall endorse the date of the filing of the certificate and record and index the certificate in a separate book. (Emphasis added.)

R.C. 1781.02 requires the county recorder to maintain a "separate book" for the recording and indexing of all certificates of limited partnership filed in his office.

The legislature has specifically provided for the manner in which the county recorder is to maintain the register of partners and partnerships as set forth in R.C. 1777.05 and for the recording and indexing of certificates of limited partnership pursuant to R.C. 1781.02 apart from the records required to be maintained pursuant to R.C. 317.08(A) through (E). Further, neither R.C. 1777.05 nor R.C. 1781.02 specifies that the information required to be maintained in the manner set forth in those sections shall be maintained in a different manner where the recorder elects to maintain only two sets of records, pursuant to R.C. 317.08(F). Cf. R.C. 317.09(B) (where the county recorder elects to maintain two sets of records pursuant to R.C. 317.08(F), the instruments listed in R.C. 317.09(A) which may be maintained in the federal tax lien record are to be kept in the "official records" required by R.C. 317.08(F)). Thus, whether the county recorder elects to maintain two sets of records pursuant to R.C. 317.08(F), or five sets of records as set forth in R.C. 317.08(A) through (E), R.C. 1777.05 requires the county recorder to maintain a separate register for the listing of the names of partners and partnerships listed in the partnership certificates filed in his office pursuant to R.C. 1777.02, and R.C. 1781.02 requires the county recorder to maintain a separate book for the recording and indexing of certificates of limited partnership. See Op. No. 84-031 (a county recorder may keep, index, and record those documents listed in the paragraph following division (E) of R.C. 317.08 in a single volume or else he must keep, index, and record those documents in the manner otherwise prescribed by statute, whether he maintains five sets of records pursuant to R.C. 317.08(A)-(E) or two sets of records as set forth in R.C. 317.08(F)).

You also ask whether a county recorder who chooses to maintain only two sets of records as described in R.C. 317.08(F) is required to maintain a separate book for notices of recognizances¹ and releases of recognizances as provided for in R.C. 2937.27, which states:

The county recorder of the county in which the property of a surety on a recognizance is located, shall keep and file all notices of lien and notices of discharge which are filed with him pursuant to [R.C. 2937.26],² and shall keep in addition thereto, a book or record in which he shall index notice of liens and notice of discharges, as they are filed with him. When a lien has been released or discharged for a period of one year, the county recorder may destroy all notices of such lien. (Emphasis and footnote added.)

R.C. 2937.27 requires the county recorder to keep and file all notices of lien and notices of discharge filed pursuant to R.C. 2937.25 and R.C. 2937.26 and to

¹ See R.C. 2937.22(C) (types of bail include "[t]he written undertaking by one or more persons to forfeit the sum of money set by the court or magistrate, if the accused is in default for appearance, which shall be known as a recognizance).

² See R.C. 2937.24 (when the surety on a recognizance qualifies as a real property owner, the surety must pledge to the state real property in this state owned by the surety); R.C. 2937.25 (providing that a lien shall attach to the real property in favor of the state in the penal sum of the recognizance, and the "clerk of the court or the magistrate shall forthwith, upon the filing with him of such recognizance, file with the county recorder of the county in which such real property is located, a notice of lien, in writing. . ."). R.C. 2937.26 states, in pertinent part:

Whenever, by the order of a court, a recognizance under sections 2937.24 and 2937.25 of the Revised Code has been cancelled, discharged, or set aside, or the cause in which such recognizance is taken has been dismissed or otherwise terminated the clerk of such court shall forthwith file with the county recorder of the county in which the real property is located, a notice of discharge. . . . [stating that the state's lien on the real property pledged as security is waived, discharged and set aside].

maintain a "book or record" in which he shall index such notices which are filed with him. See 1933 Op. Att'y Gen. No. 168, vol. I, p. 196; 1929 Op. Att'y Gen. No. 648, vol. II, p. 981.

R.C. 317.08, however, sets forth an alternate procedure for indexing, keeping, and recording certain instruments, as follows:

The recorder may index, keep, and record in one volume unemployment compensation liens, federal tax liens, personal tax liens, [mechanics'] liens, notices of liens, certificates of satisfaction or partial release of estate tax liens, discharges of recognizances, excise and franchise tax liens on corporations, and liens provided for in sections 1513.33, 1513.37, and 5311.18 of the Revised Code. (Emphasis added.)

It is apparent that the notices of lien and notices of discharge which the county recorder is required to maintain as provided for in R.C. 2937.27 are included within the types of instruments which the county recorder may index, keep, and record in the manner set forth in R.C. 317.08. See R.C. 2937.25 (upon the filing and recording of the notice of the kind described in that section, "it is notice to everyone that the real property therein described has been pledged to this state as security for the performance of the conditions of a criminal recognizance in the penal sum set forth in said recognizance and notice. Such lien does not affect the validity of prior liens on said property"). Whether the county recorder elects to maintain a single volume in which he indexes, keeps, and records the instruments listed in the above quoted portion of R.C. 317.08 is not, however, affected by the manner in which he maintains the records which he is otherwise required by R.C. 317.08 to maintain. See Op. No. 84-031. Thus, where the county recorder elects to maintain two separate sets of records as set forth in R.C. 317.08(F), he may, pursuant to R.C. 317.08, maintain a separate single volume for the indexing, keeping, and recording of, among other documents, notices of liens and notices of discharge of recognizances which he is required to maintain pursuant to R.C. 2937.27, or he may maintain such notices in a book or record as otherwise required by R.C. 2937.27.

Based on the foregoing, it is my opinion, and you are advised, that:

1. Where the county recorder elects to maintain two sets of records as set forth in R.C. 317.08(F), R.C. 1777.05 requires the recorder to maintain a separate register for the listing of the names of partners and partnerships listed in the partnership certificates filed in his office, and R.C. 1781.02 requires the recorder to maintain a separate book for the recording and indexing of certificates of limited partnership.
2. Where the county recorder elects to maintain two sets of records as set forth in R.C. 317.08(F), the recorder may, pursuant to R.C. 317.08, maintain a separate single volume for the indexing, keeping, and recording of, among other documents, notices of liens and notices of discharge of recognizances which he is required to maintain pursuant to R.C. 2937.27, or may maintain such notices in a book or record as otherwise required by R.C. 2937.27.