

804.

APPROVAL, DEED FROM ARABELLA HAYES, ETC., TO CINCINNATI, LAWRENCEBURG AND AURORA ELECTRIC STREET RAILROAD COMPANY, FOR HIGHWAY PURPOSES.

COLUMBUS, OHIO, May 10, 1933.

HON. O. O. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter submitting for my approval or opinion, deed from Arabella Hayes and Ezra G. Hayes, her husband, to the Cincinnati, Lawrenceburg and Aurora Electric Street Railroad Company, and asking whether or not such deed vests in such railroad company sufficient title that upon the execution of a proper instrument of conveyance such railroad company could convey a valid easement for highway purposes, to the state of Ohio.

An examination of such deed discloses, in my opinion, that upon execution of a proper instrument of conveyance to the state of Ohio by the railroad company, a valid easement for highway purposes would be conveyed.

Since you did not submit instruments of title, I express no opinion as to the conditions of the title prior to the grantees in such deed. My opinion herein is specifically limited to the fact that such deed purports to grant a fee title to the railroad company.

Respectfully,

JOHN W. BRICKER,
Attorney General.

805.

OFFICIAL SEAL—COUNTY RECORDER UNAUTHORIZED TO CHARGE FOR USE THEREOF—EXISTING STATUTES ON FEDERAL LOANS AND CROP MORTGAGES DISCUSSED.

SYLLABUS:

No charge can be made for the use of the official seal of the county recorder under existing statutes on federal loans and crop mortgages, or for any other use.

COLUMBUS, OHIO, May 10, 1933.

HON. F. MERCER PUGH, *Prosecuting Attorney, Wauseon, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

“I respectfully request your opinion in regards to Section 2753, General Code, the official seal of the County Recorder. It has been customary in this county to make a charge of 50c for the use of this official seal specially on federal loans and on crop mortgages. I can find no place in the General Code where this charge is authorized.

Please let me know if there is any place in the General Code where such a charge is authorized.”

It should first be noted, in answer to your question, that public officers have no powers except those which are expressly given to them by statute or which may be implied from the express powers. In the case of *Schwing vs. McClure, et al., Trustees*, 120 O. S. 335, the court said at page 340:

"The strictness with which the powers of public officers are to be exercised is evidenced by a great variety of cases, ending in this state with the decision in *State, ex rel. A. Bentley & Sons Co. vs. Pierce, Auditor*, 96 Ohio St. 44, 117 N. E., 6, which holds that the contractual power of an officer or board is fixed by the statutory limitations upon his power, and that any doubt as to the power of a public officer, as between himself and the public, must be resolved in favor of the public and against the officer. Public officers have no power except such as expressly given. *Ireton vs. State, ex rel. Hunt*, 12 C. C. (N. S.), 202, 21 O. D., 412, affirmed without opinion, 81 Ohio St. 562, 91 N. E., 1131; *Peter vs. Parkinson Treas.*, 83 Ohio St. 36, 93 N. E., 197, Ann. Cas., 1912A, 751."

It therefore becomes necessary to examine the various provisions of the General Code relative to the fees which may be charged by a county recorder. The main provisions are to be found in sections 2778, 2779 and 2780, which read as follows:

"Sec. 2778. For the services hereinafter specified, the recorder shall charge and collect the fees provided in this and the next following section. For recording mortgage, deed of conveyance, power of attorney or other instrument of writing, twelve cents for each hundred words actually written, typewritten or printed on the records and for indexing it, five cents for each grantor and each grantee therein; for certifying copy from the record, twelve cents for each hundred words. * * *"

Sec. 2779. For recording assignment or satisfaction of mortgage or discharge of a soldier, twenty-five cents; for each search of the record, without copy, fifteen cents; for recording any plat not exceeding six lines, one dollar; and for each additional line, ten cents.

Sec. 2780. 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. For the purpose of this chapter, a line shall be such portion of the record as can be drawn by a continuous stroke of the pen regardless of intersecting lines; for keeping up said indexes as provided in section twenty-seven hundred and sixty-seven, ten cents for the entry for each tract or lot of land. 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."

With specific reference to crop mortgages, which you have mentioned in your request, House Bill No. 655, which is entitled "To provide that agriculture loans made in Ohio shall comply with the United States crop production loan requirements, and to declare an emergency," reads in part as follows:

"That any farmer of this state may enter into an agreement with and borrow funds for crop production purposes from the Secretary of Agriculture of the United States, pursuant to existing or future acts of Congress, and may give as security therefor his promissory note or notes secured by a chattel mortgage or mortgages upon his crop or crops either planted or to be planted within one year from the date of the execution of such mortgage or mortgages, or any extension thereof, on lands within this state, in such form as the Secretary of Agriculture shall prescribe and such mortgages shall be entitled to be filed in the office of the recorder of deeds for the county in which the crops are to be grown, and the fee therefor shall be the same as that charged for the filing of chattel mortgages."

The fees allowed to the county recorder under this bill are the same as those provided for in case of a chattel mortgage, in section 8572, which reads as follows:

"For services in respect to chattel mortgages, or instruments for conditional sales, as provided in this chapter, the officer shall be entitled to receive the following fees: For filing each instrument or copy, six cents; for searching each paper, six cents; for making the entries upon the filing of an instrument, six cents for each party thereto; for recording such instruments, ten cents per hundred words; for recording any affidavit, credit or statement added to an instrument between the time of its record and refiling, twenty-five cents; and the like fees for certified copies of such instrument, or copies, as are allowed by law to county recorders for like services."

There are other sections of the General Code which provide that a county recorder shall do certain acts and allow him to charge a definite fee therefor. However, none of these sections permits the county recorder to make any charge for the use of the official seal. Nor is there any permission given the recorder to charge for the use of such seal by section 2753, General Code, which section requires the recorder to keep a seal, and reads as follows:

"The county recorder shall keep a seal of office, to be procured at the expense of the county, which he shall affix to all his certificates to copies of records."

Since there is no express power given to the county recorder to charge for the use of his seal and since no power to do so can be implied from the express powers given, it must be concluded that under no construction of law could he exercise such right. The authorities are all in accord with the doctrine that public officers can not charge any fees except those which are allowed by statute. This rule was definitely established in *Debolt vs. Trustees of Cin. Township*, 7 O. S. Reports, page 237, where the court said at page 239:

"No officer, whose compensation is regulated by fees, can charge for a particular service, unless the law specifically gives him fees for that service."

The same doctrine was applied in the case of *Jones, Aud. vs. Commissioners of Lucas County*, 57 O. S. 189, where the court stated on page 208:

"When to the foregoing we have added the rule, well established in this state, as held in *Debolt vs. The Trustees*, 7 Ohio St. 237, that 'an officer whose fees are regulated by statute, can charge fees for those services only to which compensation is by law affixed,' and the corollary, as held in *Anderson vs. Commissioners*, 25 Ohio St., 13, that 'where a service for the benefit of the public is required by law, and no provision for its payment is made, it must be regarded as gratuitous, and no claim for compensation can be enforced,' which rule is more fully stated, but to like import in *Strawn vs. Commissioners*, 47 Ohio St., at page 480, the conclusion inevitably follows, that the auditor's services in making the report for the commissioners must be deemed, if not gratuitous, at least satisfied by the salary attached to his office, and that he is not entitled to extra compensation for such services, payable out of the county treasury."

It is therefore my opinion, in specific answer to your question, that there is no statutory authority for a charge of fifty cents for the use of the official seal of the county recorder.

Respectfully,

JOHN W. BRICKER,
Attorney General.

806.

BONDS—CONTINUE TO DRAW INTEREST WHEN NOT PAID AT MATURITY—NO EXCEPTION TO RULE WHEN FUNDS TO PAY SAME ARE IN CLOSED BANK OR DEFICIENCY EXISTS DUE TO NON-PAYMENT OF TAXES.

SYLLABUS:

Bonds of a political subdivision not paid upon presentation at maturity continue to draw interest until they are paid regardless of the fact that the funds in such subdivision are on deposit in a closed bank, and it does not have sufficient funds to pay them at maturity due to the non-payment of taxes.

COLUMBUS, OHIO, May 10, 1933.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads in part as follows:

"On September 20, 1932, your predecessor in office rendered an opinion to me upon the question of whether or not a political subdivi-