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COUNTY RECORDER—NO AUTHORITY TO CONTRACT WITH PRIVATE CONCERN TO PHOTOSTAT AND RETURN INSTRUMENTS PRESENTED FOR RECORD.

SYLLABUS:

A county recorder has no authority to enter into an agreement with a private concern, pursuant to which agreement such concern would photostat and return to the recorder instruments which had been presented for record.

Columbus, Ohio, July 30, 1956

Hon. Myron A. Rosentreter, Prosecuting Attorney
Ottawa County, Port Clinton, Ohio

Dear Sir:

I have before me your request for my opinion as to the authority of a county recorder to send plats which are presented to him for record to a commercial concern to be photostated. The following specific questions were presented for my consideration:

- “(1) Can recorder have plats photostated by commercial concerns or must the photostating be done by the Recorder?”
- “(2) Can the size of the plat be reduced in the process of photostating and the reduced photostat be used for the record of the plat?”

You have directed my attention to Section 317.13, Revised Code, which section provides in material part:

“The county recorder shall record in the proper record, in legible handwriting, typewriting, 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.)

The above quoted section imposes upon the county recorder the duty to record all instruments entitled to record, and in addition permits the use of any authorized photographic process for this purpose.

Section 9.01, Revised Code, provides in pertinent part as follows:

“When any officer * * * of a county, or any political subdivision, who is charged with the duty or authorized or required by law to record, preserve, keep, maintain, or file any record, document, plat, court file, paper, or instrument in writing, * * * deems it necessary or advisable, when recording any such document, * * * to do so by means of any photostatic * * * process, which correctly and accurately copies or reproduces, or provides a medium of copying or reproducing, the original record, document, plat, court file, paper, or instrument in writing, such use of any such photographic processes, for any such purpose, is hereby authorized. * * *”

I do not doubt the authority of the county recorder under the above sections to employ a photostatic process in performing the duties imposed by Section 317.13, Revised Code; nor would there be any objection to reducing the size of the plat to be recorded in the process of photostating so long as an accurate reproduction is made.

Inherent in your request, however, is the question of the authority of the county recorder to enter into any agreement not specifically authorized by law. County officers have only such powers as are expressly conferred by statute, or may be necessarily implied therefrom. 14 Ohio Jurisprudence, 2nd, 238.

A review of the provisions relating to the powers and duties of county recorders discloses no express authority to enter into an agreement such as you describe.

If authority does exist which would allow the recorder to contract with a commercial concern for the purposes mentioned, such authority must necessarily be found by implication in the statute, there being no express authority granted in this regard. Section 317.13, Revised Code, does not, in my opinion, give rise to such a necessary implication. This section, together with Section 9.01, Revised Code, simply authorizes the use of a photostatic process as one of the several alternative methods for performing the duties prescribed. The use of such a process is not essential to the performance of these duties.

In addition, provision has been made for the acquisition of photostatic equipment by purchase or rental. Section 9.01, Revised Code, further provides in part as follows:

“Any such officer, office, court, commission, board, institution, department, agent, or employee of the state, a county, or any

political subdivision may purchase or rent required equipment for any such photographic process. * * *

In these circumstances I feel constrained to hold that a county recorder who elects to exercise this discretionary statutory authority to photostat instruments for record, must do so as an incident of the operation of his own office by the use of equipment purchased or rented for that purpose, rather than by contracting with a private person or firm to accomplish such function for him and in his stead. This view is supported also by the following language in Section 317.12, Revised Code:

“Upon the presentation of a deed or other instrument of writing for record, the county recorder shall indorse thereon the date, the precise time of its presentation, and a file number. * * * Until recorded, each instrument shall be kept on file in the same numerical order, for easy reference. * * *”

This language plainly suggests that during the interval from the “precise time” an instrument is presented to the time of being recorded, such instrument is to be kept *in* the recorder’s office, available “for easy reference.” This would scarcely be possible under the proposed plan you describe.

Accordingly, in specific answer to your question, it is my opinion that a county recorder has no authority to enter into an agreement with a private concern, pursuant to which agreement such concern would photostat and return to the recorder instruments which had been presented for record.

Respectfully,
C. WILLIAM O’NEILL
Attorney General