

2997.

COUNTY RECORDER—PHOTOSTATING—SECTION 2759 G. C. CONSTRUED—SAID SECTION NOT BROAD ENOUGH TO AUTHORIZE THIS PROCESS TO PRESERVE RECORDS IN COUNTY RECORDER'S OFFICE.

The word "printing" occurring within the provisions of section 2759 G. C. and authorizing one of the three methods by which county recorders shall record the instruments specified by the section, contemplates the process commonly known and designated as typographical printing, and is not broad enough in the sense and meaning used to include the process of photostating, or photographic printing.

COLUMBUS, OHIO, April 15, 1922.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cuyahoga County, Cleveland, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent communication which reads as follows:

"The Board of County Commissioners of Cuyahoga county has under consideration the matter of having recorder's and other county records made up by photographic prints of the original papers sought to be recorded. They have asked this department whether under the provisions of section 2759 G. C. records in the recorder's office could be made up by photographic prints. We are inclined to the opinion that if the state of the photographic art is such that the element of durability is settled, such records could be made up by photographic printing as well as by any other process of printing. This being a question that is state wide in its application and importance, we ask that you give us your opinion on the subject."

Answer to your question is thought to be indicated in the construction given section 2759 of the General Code.

The section is as follows:

"Sec. 2759. The county recorder shall record in the proper record in a fair and legible handwriting, typewriting, or printing, all deeds, mortgages, or other instruments of writing required by law to be recorded, presented to him for that purpose. They shall be recorded in regular succession according to the priority of presentation, entering the file number at the beginning of such record. At the foot of the record of each instrument he shall record the date and precise time of day when it was presented for record."

Construing the section quoted, it becomes apparent that the legislature has provided three methods by which county recorders are required to record all deeds, mortgages or other instruments of writing required by law to be recorded, and the three methods indicated are, by fair and legible "*handwriting*," "*typewriting*," or by "*printing*."

It is obvious that the process of "photostating" or photographic printing cannot be said to come within the meaning of the words handwriting, or typewriting as used in the section, but whether or not the same may be said to come within the meaning of the word "*printing*" so used, becomes the principal question for consideration.

Since a definition of the word or term "photostating" is unrecorded by lexicographers, owing no doubt to the very recent date of the perfection of such a

process, no attempt is made to further define the term, although it is believed that the process as generally understood and employed at the present time may be said to be based purely upon the principles of photography, inasmuch as the process requires the use of a camera, and the photographing of the instrument to be reproduced. Webster's Dictionary defines the word "photography" as follows:

1. The science of the action of light on bodies; the principles of physics and chemistry which relate to the production of pictures by the action of light.

2. The art of producing pictures of objects by the action of light on chemically prepared surfaces as silver, glass, paper, etc.; or the art of receiving and fixing on such surfaces the images formed by the camera.

The same lexicographer defines the word "printing" as follows:

"The act, art, or practice of impressing letters, characters or figures on paper, cloth, or other material; the business of a printer; typography. Century Dictionary defines the word "printing" as follows:

1. "In general the art or process of making copies or superficial transfers by impression; the reproduction of designs, characters, etc., on an impressible surface by means of an ink or pigment applied to the solid surface on which they are engraved or otherwise formed."

2. "The art or process of producing printed matter for reading including illustrations, by composition and imposition of types, and their subjection when inked to pressure upon paper in a printing press; the typographic art; typography in the fullest sense."

An examination of the definitions given the words considered, obviously discloses the fact, that the art of photography and that of printing are different arts or sciences, the former being based upon principles involving the action of light and chemical reaction, whereby the exact image or facsimile of the object photographed is reproduced in exact likeness to the minutest detail, while the latter may be said in principle, to be that of reproducing the language originally used, by the mechanical impression of types or symbols treated with ink or pigment upon impressionable surfaces, and which art obviously does not necessarily contemplate the reproduction of the object or language in the exact image of the original.

It is true the general term "printing" is commonly applied to the process in photography whereby "prints" are obtained from the negative recorded by the lens of the camera, but such printing is thought to be characteristically different, from typographical printing or such as is obtained from mechanical impressions made from types or like character; the former being a "print" as the word is generally used in photography obtained by a chemical process, while the latter may be said to be a process purely mechanical.

Thus it is thought to be concluded that the process of printing as applied in photography is not the same process commonly termed "printing" when such a word is used in its ordinary significance.

Consideration may at this point be given the question of legislative intent in the use of the word "printing" as it occurs in section 2759 G. C. A brief history of the section reveals the fact that the word "printing" first occurs in the amendment of original section 1145 R. S., in H. B. No. 578, passed by the legislature May 12, 1902, 95 O. L., 606; and previous to such amendment the section provided that the recorder should record the designated instruments in a fair and legible "*handwriting.*" The words "typewriting or printing" not having been written into the section previous to this time. That is to say, that for approximately twenty years the word "printing" has continued within the written provisions of the section considered. The question may now be asked, did the legislature intend by the act of May 12, 1902, to use the word "printing," in the sense and meaning commonly attributed to the word, i. e. in its typographical sense, or did it intend by the use of

the word to include a process involving the principles of photography in the recording of the instruments specified by the section.

In this connection, it is believed that the main purpose of the section considered was to require an exact record of the language used in the specified instruments, in order that the meaning, purport, and significance, of such language should be permanently preserved for the purpose of determining the legal rights of parties bound by such instruments, and it is thought the legislature was more concerned in the reproduction of the language used rather than in requiring the exact image or reproduction of the characters and symbols of which such language was composed.

It is not known definitely as to the date of the invention or perfection of the process or art called "photostating," however from information available it is not believed that the process could be said to have existed or been known at the time of the enactment of H. B. No. 578, May 12, 1902, and under such circumstances it is hardly possible that the legislature intended by the use of the word "printing" to include such a process. It would seem therefore more reasonable to presume, that by the use of the word printing the legislature contemplated the process of typographical printing, or that ordinarily obtained from the use of inks or pigments and the mechanical impression of types upon paper or other impressible surfaces.

Viewed however in the light of economy it would seem that such a process might possess many advantages over those methods now employed in the recording of public records, since from information obtainable it is thought the same might save time and labor, as well as being less expensive than the present methods in use. While appreciative therefore of the advantages possibly attainable by the adoption of this modern method of recording public records, yet until such a time as the legislature may see fit to more specifically authorize such a process, I feel unwarranted in concluding that the word "printing" as used in section 2759 G. C. may be construed to include the process of photostating. Specific answer therefore to your question must be made in the negative.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2998.

APPROVAL, ABSTRACT OF TITLE, PREMISES SITUATE IN MUSKINGUM COUNTY, VILLAGE OF DRESDEN, PART OF OUT-LOT NUMBERED THIRTY-FIVE.

COLUMBUS, OHIO, April 17, 1922.

HON. GEORGE FLORENCE, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR:—You have submitted an abstract, certified by John P. Baker, abstracter, March 16, 1922, and inquired as to the status of the title to the following described premises as disclosed by said abstract:

"Situated in the county of Muskingum, in the State of Ohio, and in the village of Dresden, and bounded and described as follows: And being a part of out-lot numbered thirty-five (No. 35) as the said lot is numbered and designated upon the plat of said village of Dresden, recorded in the recorder's office of Muskingum county, Ohio, in deed record, volume I, page 24, commencing on the southeast corner of said lot 35, thence westwardly