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RECORDER, COUNTY—FEE—SHALL CHARGE FEE OF FIFTY CENTS FOR AFFIXING SEAL OF OFFICE TO CERTIFIED COPIES OF INSTRUMENTS—§317.32, R.C.

SYLLABUS:

Under Division (I) of Section 317.32, Revised Code, as amended by amended House Bill No. 9, 103rd General Assembly, effective July 17, 1959, the county recorder shall charge and collect a fee of fifty cents for affixing the seal of his office to certified copies of instruments, except as to instruments issued by the armed forces of the United States, in addition to the fees provided by said section for certifying copies of his records.

Columbus, Ohio, July 13, 1959

Hon. Joseph Blair Yanity, Jr., Prosecuting Attorney
Athens County, Athens, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The undersigned has been contacted by Claudis E. Chappell, Recorder of Athens County, Ohio, relative to an opinion in statutory interpretation concerning amended Ohio Revised Code Section 317.32 which will become effective July 17, 1959, since amended House Bill No. 9 was approved April 17, 1959, by Governor DiSalle.

“Our question concerns Subsections E and I. “E” appears to be the same language as contained in the section before amendment but “I” has been added in its entirety. Does the new section mean to imply that the charge for a certified copy shall be the original cost plus \$.50 or just the original cost? Further, it is our impression that any certification would have to bear the seal of the recorder.

“To present the problem with an example, let me add the following set of facts. A, on July 17, 1959 presents a 2-page instrument for recording. Athens County utilizing the photostat system charges and receives \$2.00. A, on July 20, 1959, calls at the Recorder’s office and requests a certified copy of the instrument which we feel would require the seal of the Recorder to be considered certified. Is the charge \$2.00 (the cost of the original recording) or \$2.50 (the original recording charge plus \$.50 under Subsection I)?”

Amended House Bill No. 9, 103rd General Assembly, effective July 17, 1959, contains amendments of different sections of the Revised Code, including certain amendments of Section 317.32, Revised Code, relative to the fees the county recorder shall charge and collect for his services. Comparing the changes in said section with the existing statute, I see that the fees provided for in divisions (D), (F), and (G) have been increased, and that the word "photostat" has been replaced with the word "photocopy" in divisions (D), (E), and (F). The last named change in the use of words relative to the process of reproduction used is apparently immaterial; according to Webster's New International Dictionary, (2d Edition) both mean practically the same thing—the making of photographic copies of drawing, printed matter, etc.

Division (I), with which we are here concerned, is entirely new language. It reads:

"For each certificate *where recorder's seal is required*, except as to instruments issued by the armed forces of the United States, fifty cents." (Emphasis added)

I believe that your impression as to the requirement of the seal of the recorder for all certified copies of records is a correct one. Section 317.04, Revised Code, reads:

"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 attached to copies of records.*" (Emphasis added)

What was the intention of the General Assembly in adopting the provisions contained in division (I) of Section 317.32, *supra*? The most plausible explanation of the new provision, which at first blush appears paradoxical, seems to be, that an additional fee of fifty cents is intended for the affixing of the seal of the county recorder to all certified copies of records, but that an exception is intended with respect to certified copies of instruments issued by the armed forces of the United States. Any other interpretation of the newly adopted provision under consideration would necessarily imply that the Legislature did a futile thing, which conclusion should be avoided if at all possible. See Sutherland, Statutory Construction, Section 4510.

The hypothetical situation posed in your letter should, therefore, be resolved as follows:

A, on July 17, 1959, presents the recorder of Athens County a two-page instrument for recording, for which a recording fee of \$2.00 is charged and collected. On July 20, 1959, A calls at the recorder's office and requests a certified copy of the instrument, which is issued, with recorder's seal affixed in accordance with the provisions of Section 317.04, Revised Code, a fee of \$2.00 is charged and collected pursuant to the provisions of division (E) of Section 317.32, Revised Code, and an additional fee of fifty cents is charged and collected pursuant to division (I) of Section 317.32, Revised Code.

In specific answer to your inquiry, therefore, you are advised that under Division (I) of Section 317.32, Revised Code, as amended by amended House Bill No. 9, 103rd General Assembly, effective July 17, 1959, the county recorder shall charge and collect a fee of fifty cents for affixing the seal of his office to certified copies of instruments, except as to instruments issued by the armed forces of the United States, in addition to the fees provided by said section for certifying copies of his records.

Respectfully,

MARK MCELROY

Attorney General