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SYLLABUS:

A carbon duplicate of a real estate mortgage which has been executed in the same manner as was the original mortgage, or a carbon duplicate of a real estate mortgage bearing an express note that such mortgage was executed in duplicate, may be filed for record under Section 5301.23, Revised Code, in the office of the county recorder, and the recorder is required to accept such duplicate of a mortgage for record.

Columbus, Ohio, September 11, 1962

Hon. Edmund G. Peper, Prosecuting Attorney  
Henry County, Napoleon, Ohio  
Dear Sir:

I have your request for my opinion which reads as follows:

“The Henry County Recorder has had presented to her for recording duplicate carbon copies of mortgages which have been separately signed and executed by the mortgagors before two attesting witnesses, who also have subscribed their names, and before a Notary Public who has subscribed his signature and affixed his notarial seal thereto. The execution of these duplicate

carbon copies was performed contemporaneously with the execution of the original mortgage and in the same manner as the original mortgage. Upon one of the duplicate carbon copies, the following words appeared: 'This mortgage is executed in duplicate. This copy may be treated as a duplicate original.' However, in other instances of presenting a duplicate carbon copy no such language appeared upon the mortgage.

"Your Opinion Number 2849 rendered March 2, 1962, states that copies of instruments specified in Sections 317.08 and 317.13 Revised Code, should not be accepted by the County Recorder for recording. I am curious to know if this opinion should be interpreted so as to include duplicate carbon copies of instruments which have been fully executed by the mortgagors and properly witnessed and notarized.

"I am advised by the mortgagee, who presented the duplicate carbon copy for recording that this is pursued by him when the real estate security is situated in two adjoining Counties. In such a situation the original copy is presented for recording in one of the counties and the duplicate carbon copy is presented for recording in the other county."

I note that in the instant situation duplicates of mortgages given as security for the payment of money by the debtor were executed contemporaneously with original mortgages, and that in some instances duplicates were executed in the same manner as were the original mortgages, and that in other instances the duplicates were not so executed but bore the notation: "This mortgage is executed in duplicate. This copy may be treated as a duplicate original."

I further note that the question posed herein arose because undivided parcels of mortgaged land are situated in two adjoining counties.

In the syllabus of Opinion No. 2849, Opinions of the Attorney General for 1962, to which reference is made in your letter, I stated:

"*Copies* of instruments specified in Sections 317.08 and 317.13, Revised Code, should not be accepted by the county recorder for record; however, where a statute specifically states that a copy of a particular instrument may be filed for record in the office of the county recorder (Section 1701.80, Revised Code, for example) the recorder is required to accept such copy for record." (Emphasis added)

As to the recording of real estate mortgages, Section 5301.23, Revised Code, provides:

"All mortgages properly executed shall be recorded in the office of the county recorder of the county in which the mortgaged premises are situated, and take effect from the time they are delivered to such recorder for record. If two or more mortgages are presented for record on the same day, they shall take effect in the order of presentation. The first mortgage presented must be the first recorded, and the first recorded shall have preference."

Thus the question is presented whether a duplicate of an original instrument, such as here considered, is to be regarded a "copy" and as such would come under the conclusion of Opinion No. 2849, *supra*.

In *City Loan and Savings Co. v. Morrow*, 69 Ohio App., 476, the third headnote reads:

"There is a distinction between the words, 'true copy' and the word 'duplicate,' the latter signifying the double of anything, *an original repeated, or a document the same as another*; where 'a true copy' may be more or less a variation from the original."  
(Emphasis added)

Numerous cases from other jurisdictions to the same effect are cited in 13 Words and Phrases, page 633. And the noun "duplicate" is defined in its legal significance in Webster's International Dictionary (3rd Ed.) as follows:

"An original instrument repeated: a document the same as another in essential particulars and different from copy in that it is valid as original."

It clearly follows that an instrument such as described in the instant case is not a "copy" but a legally valid duplicate of the original instrument and as such, is required to be accepted by the county recorder for record as if it were the original instrument.

Therefore, answering your specific question, it is my opinion and you are advised that a carbon duplicate of a real estate mortgage which has been executed in the same manner as was the original mortgage, or a carbon duplicate of a real estate mortgage bearing an express note that such mortgage was executed in duplicate, may be filed for record under Section 5301.23, Revised Code, in the office of the county recorder, and the recorder is required to accept such duplicate of a mortgage for record.

Respectfully,

MARK MCELROY

Attorney General