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1. LIEN—CERTIFICATE OR CERTIFIED COPY—PRESENTMENT TO COUNTY RECORDER FOR ENDORSEMENT, INDEXING, RECORDING—WHEN OPERATIONS COMPLETED, INSTRUMENT MAY BE RETURNED TO DIVISION OF AID FOR THE AGED—SECTION 1359-4 G. C.
2. FEE FOR FILING AND RECORDING IS TWENTY-FIVE CENTS.
3. CERTIFICATE OF LIEN—MUST BE INDEXED AND RECORDED IN SET OF RECORDS DESIGNATED REAL ESTATE MORTGAGE RECORDS.
4. COUNTY RECORDER—PERFORMANCE OF DUTIES UNDER SECTION 1359-4, G. C.—NO LIABILITY UNDER SECTION 1359-24a, G. C. FOR PERFORMANCE OF DUTIES.

## SYLLABUS:

1. Section 1359-4, General Code, requires the presentment of the certificate of lien or a certified copy thereof to the recorder for endorsement, indexing and recording by that office and having completed these operations the recorder is free to return the certificate to the division of aid for the aged.

2. The fee which the recorder can charge for filing and recording each certificate of lien or certified copy thereof is twenty-five cents.

3. The certificate of lien or certified copy thereof provided for by Section 1359-4, General Code, must be indexed and recorded in the set of records designated real estate mortgage records.

4. A county recorder performing the duties required of him under the provisions of Section 1359-4, General Code, incurs no liability under the provisions of Section 1359-24a, General Code, for the performance of those duties.

Columbus, Ohio, November 15, 1951

Hon. John Rossetti, Prosecuting Attorney  
Stark County, Canton, Ohio

Dear Sir:

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

“With reference to newly enacted Section 1359-4, General Code, would you please render your opinion as to whether

"1. The certificate of lien, or certified copy thereof, provided for in the above mentioned section, should be recorded and then returned to the Division of Aid for the Aged, or whether it should be preserved in the office of the Recorder, and if the certificate of lien or certified copy thereof is to be recorded, what is the fee which the Recorder should charge for recording this lien in view of the provisions of Section 2778, General Code.

"2. The certificate of lien or certified copy thereof above referred to, must be recorded and indexed in the Real Estate Mortgage Record presently existing or whether a new and separate book or books may be used.

"3. The recording and indexing of the certificate of lien or certified copy thereof above referred to under the provisions of Section 1359-4, General Code, places any liability upon the County Recorder under the provisions of Section 1359-24a, General Code."

1. The first part of your request raises two questions which I shall treat separately. The first is whether or not the certificate of lien provided for by Section 1359-4, General Code, shall be recorded, and the second involves the fee to be charged for that recording.

(a) I take it that the first portion of your request goes to the question of whether this certificate of lien is to be treated by the recorder like a chattel mortgage or like a mortgage on real estate. A chattel mortgage, once filed with the recorder, is indexed and the instrument is then preserved in the recorder's office for inspection by the public. This procedure is provided for by the language of Section 8562, General Code, as follows:

"He also shall file the instrument in his office to be there kept for the inspection of all persons interested, *unless deposited for recording* under Section 8563, General Code."

(Emphasis added.)

The underlined portion of this language is important for it makes clear that the preservation of the filed instrument is required only in the event that the instrument is not recorded. Likewise, in the case of mortgages on real property, under the recording provisions of Section 8542, General Code, it is accepted administrative practice in this state to return the filed instrument to the person presenting the same once the instrument has been recorded. The apparent validity of this practice, in both instances, rests upon the reasoning that once the instrument is preserved by recording there is little, if any, reason for burdening the public records with duplicating original documents.

The precise language of Section 1359-4, General Code, supra, which governs the answer to the question which you have raised, is as follows:

“The division shall cause such certificate, or a certified copy thereof, to be filed, recorded and indexed in the real estate mortgage records in the office of the county recorder. \* \* \*”

This language makes abundantly clear that the certificate of lien, or a certified copy thereof, must be recorded, but does the word “file” indicate that the certificate or certified copy must be retained by the recorder after the act of recording is complete? An examination of the statutes and case authorities in this state has failed to disclose any precise definition of the term “filed.” In fact, depending upon the context in which it is used, the term seems to take on many different meanings. I have already pointed out that in the case of instruments most analogous to this certificate of lien, the chattel mortgage and the mortgage on real property, the practice is to dispense with preservation of the instrument after recording thereof. It is significant to note too that the legislature attached to this new lien as many of the attributes of a mortgage on real property as possible and I think it eminently logical to reason that the recording practice now in use for the one was intended to be used for the other. Certainly, no valid reason can be suggested for requiring the recording of an instrument by an officer who in the same office is to preserve the original instrument. I might add that the sequence of the terms used also compels the conclusion which I have indicated. The instrument is to be filed and then recorded, not recorded and then filed. For these reasons, it is my opinion that Section 1359-4, General Code, supra, requires the presentment of the certificate of lien or a certified copy thereof to the recorder for endorsement, indexing and recording by that office and that having completed these operations the recorder is free to return the certificate to the division of aid for the aged.

(b) Section 1359-4, supra, provides for the fee which the county recorder may charge for the filing and recording of each certificate of lien or certified copy thereof as follows:

“The fee for filing and recording each such certificate shall be twenty-five cents, which amount shall be payable by the recipient.”

Section 2778, General Code, which was effective October 11, 1945, to which you referred in your request, provides as follows:

“For the services hereinafter specified, the recorder shall charge and collect the fees provided in this and the next following section. For recording manually or through the use of a typewriter a mortgage, deed of conveyance, power of attorney or other instrument of writing, twenty-five cents for each hundred words actually written, typewritten or printed on the records and for indexing it, ten cents for each grantor and each grantee therein; for certifying copy from the record, twenty-five cents for each hundred words.

“For recording and indexing any of the above when the photostat or any similar process is employed the charge shall be sixty cents for each page, size  $8\frac{1}{2} \times 14$  or fraction thereof, of said instrument; for certifying copy from the photostat record the fee shall be the same as was charged for recording.

“For certifying copy by making a photostat of any written or typewritten record previously recorded the charge shall be sixty cents per page, size  $8\frac{1}{2} \times 14$  or fraction thereof. The fees in this section provided shall be paid upon the presentation of the respective instruments for record or upon the application for any certified copy of the record.”

As your request implies, the provisions of Section 2778, General Code, *supra*, are in apparent conflict with the fee provision of Section 1359-4, General Code. The ordinary and well accepted rules of statutory interpretation, however, provide a ready answer to these apparently conflicting provisions. It is my opinion that the fee provision of Section 1359-4, General Code, *supra*, clearly prevails over the general provisions of Section 2778, General Code, *supra*, in this instance, if for no other reason than that a later enactment dealing with a particular subject supersedes an earlier act legislating generally upon the same and other subjects. *State, ex rel. Crabbe, Attorney General v. City of Cleveland*, 115 Ohio St., 484. Likewise, a special statutory provision which applies to a specific subject matter constitutes a controlling exception to a general statutory provision. *The Acme Engineering Company v. Jones, Admr., Bureau of Unemployment Compensation*, 150 Ohio St., 423.

It is clear in the present instance that the provisions of Section 2778, *supra*, are general provisions intended by the legislature to establish a rule which would apply broadly to all recordings. However, by the quoted provisions of Section 1359-4, General Code, *supra*, the legislature has created a specific exception to this general rule and it is my opinion, therefore, that the fee which the recorder can charge for filing and recording each certificate of lien or certified copy thereof is twenty-five cents.

2. The second portion of your request raises the question as to whether the certificate of lien or certified copy thereof provided for by Section 1359-4, General Code, supra, must be indexed and recorded in presently existing sets of records or whether a new set can be utilized for this particular lien. The sets of records which the recorder is authorized to keep are provided for by Section 2757, General Code. This section provides for five sets of records :

1. A record of deeds.
2. A record of mortgages.
3. A record of powers of attorney.
4. A record of plats.
5. A record of leases.

Although other miscellaneous records are provided for, these represent the five major systems or sets of records which are maintained. Undoubtedly, with this provision in mind, the legislature spelled out with certainty the place where the certificate of lien should be indexed and recorded. The certificate must be recorded and indexed in "the Real Estate Mortgage Records" as distinguished from any of the other four major sets of records or any of the miscellaneous sets otherwise provided for. The language of Section 1359-4, supra, without doubt precludes a separate and distinct set of records such as might be entitled "certificates of lien, aid for the aged." However, I think it wise to point out that within any authorized set of records, administrative practice may establish certain convenient divisions or classifications. This practice of providing for subdivisions to an authorized set of records is not specifically provided for by law but neither am I able to find any statutory prohibition of such a practice. Sections 2757, 2759, 2764 and 2766, General Code, contain provisions for the keeping and indexing of records by the county recorder. But these sections are silent as to the administrative detail involved in the recorder's duties. I am forced to conclude, therefore, that whether or not divisions or clasifications may be made in an authorized set of records is a matter of administrative detail to be determined by the proper officer and is not a question of law which is the concern of this office. Of course any administrative procedure should be established with the policy and object of the recording act clearly in mind. This policy is pointed out in 35 O. Jur., Records, §44, as follows :

“\* \* \* The object is to furnish the best and most easily accessible evidence of titles to real estate, so that subsequent purchasers or those acquiring liens thereon may be informed and have notice of any prior deeds or encumbrances. \* \* \*”

It is, therefore, my opinion that the certificate of lien or certified copy thereof provided for by Section 1359-4, General Code, must be indexed and recorded in the set of records designated real estate mortgage records.

3. The third portion of your request raises a question as to the liability, under the provisions of Section 1359-24a, General Code, which may be incurred by a county recorder in the performance of the duties required of him by Section 1359-4, supra. Section 1359-24a, supra, reads as follows:

“That it shall be unlawful, except for purposes directly connected with the administration of aid for the aged or other forms of public assistance, in accordance with the rules and regulations and interpretations of the division, for any person or persons to solicit, disclose, receive, make use of, or authorize or knowingly permit, participate in, or acquiesce in the use of, any list of names of, or any information concerning persons applying for or receiving aid for the aged, directly or indirectly obtained from the records, papers, files, or communications of the division or its subdivisions, or acquired in the course of the performance of official duties.

“Whoever violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$500.00 or imprisoned not more than six months, or both.”

At first glance, it may seem that when the Recorder places the certificate of lien provided for by Section 1359-4, supra, on record, thereby making the information contained on such certificate a matter of public notice, he brings himself, innocently, within the provisions of Section 1359-24a, supra. It goes without saying, however, that such an absurd result was not intended by the legislature. It is wise to point out in the first instance that Section 1359-24a, General Code, does not apply when the action taken is for purposes directly connected with the administration of aid for the aged, and in as much as the new procedure provided for by Section 1359-4, General Code, is an integral part of that administration, performance of his duties by the recorder would constitute actions specifically exempted from the provisions of Section 1359-24a, General Code.

But even if this exception is not so apparent as I think it to be, the rule of statutory construction discussed in 2 supra applies equally to this situation.

Section 1359-24a, General Code, is a general statute establishing a broad rule for the administration of aid for the aged. Section 1359-4, General Code, spells out a specific instance where the action otherwise prohibited by Section 1359-24a, is required. And the latter being a special statute covering a particular subject matter, it must be read as an exception to a statute covering the same and other subjects in general terms. *Western & Southern Indemnity Company v. Chicago Title & Trust Company, et al.*, 128 Ohio St., 422.

The rule is best presented in Sutherland, *Statutory Construction*, Sec. 2012:

“When a subsequent enactment covering a field of operation coterminous with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails, and the prior law yields to the extent of the conflict.”

It is my opinion, therefore, that a county recorder performing the duties required of him under the provisions of Section 1359-4, General Code, incurs no liability under the provisions of Section 1359-24a, General Code, for the performance of those duties.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General