

OFFICERS: Recorder of deeds: Recorder of deeds can refuse
Fees and Salaries: ~~Recording~~ recording instrument until
recording fee is paid.

*See opinion Feb 3, 1959 to
James H. Anderson*
February 2, 1951

Honorable William L. Hungate
Prosecuting Attorney
Lincoln County
Troy, Missouri

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43

Dear Sir:

Your letter at hand requesting an opinion of this department, which, in part, reads:

"Frequently our Recorder of Deeds receives thru the mail instruments to be recorded. Sometimes the sender does not enclose the necessary fee to pay for filing or recording. In prior years our Recorder accepted such instruments and filed or recorded them, then at the end of each month the Recorder was required to remit to the County his fees on all filed or recorded instruments. Frequently such fees had not yet been received by him and he found there were many he never collected.

"Now our Recorder would like to know if he can refuse to file or record an instrument unless, or until he first receives his fee. Of course the thing that worries him is that he might receive through the mail a Deed of Trust with no accompanying fee, and in accord with what he deems good business practice, refuses to file or record it until he receives his fee, and so writes the sender. Then suppose someone comes in with a Deed of Trust on the same piece of property and pays their fee and he records for them. Does the second Deed of Trust have priority over the first? Is the Recorder liable for not having recorded the first?"

Honorable William L. Hungate

The principal question which you have asked is whether or not the recorder of deeds in your county can refuse to file or record an instrument unless or until he receives the proper fee for filing and recording same. In this connection your attention is directed to Section 59.320, R.S. Mo. 1949, which reads as follows:

"The recorder shall not be bound to make any record for which a fee may be allowed by law, unless such fee shall have been paid or tendered by the party requiring the record to be made."

We believe that the above statute is clear in its language and definite in its meaning, and as we interpret it the recorder of deeds is not required to record an instrument until the fee for recording the same is first paid or tendered by the party presenting the instrument.

In view of the above-quoted statute, and our interpretation of same, it is our further thought that there would be no liability on the recorder of deeds should the situation arise as you have set out in your letter. However, as a suggestion, it might be well for the recorder of deeds, in writing a person who has sent by mail an instrument to be recorded without enclosing the fee, to cite the above statute when he refuses to record the instrument.

CONCLUSION

It is therefore the opinion of this department that a recorder of deeds may refuse to file or record an instrument presented to him until the proper fee for recording same has been paid or tendered.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RFT:ml