December 29, 1997

OPINION NO. 97-055

The Honorable Dean Holman
Medina County Prosecuting Attorney
60 Public Square
Medina, Ohio 44256

Dear Prosecutor Holman:

We are in receipt of your letter asking whether a county recorder has a duty, pursuant to R.C. 5301.38, to record a copy of the original land patent of the Western Reserve Territory. Your question arises because this document has been presented for recording in several counties, but has not been treated consistently by the various county recorders to whom it has been presented.

You have enclosed with your request a copy of the patent, as it was presented and recorded in a neighboring county. The patent was executed by the President of the United States, John Adams, on March 2, 1801, to "release and convey to Jonathan Trumbull, Esquire, Governor of the State of Connecticut, and his successors in Office...all the right, title, interest, and estate of the United States in the soil" of the tract of land described therein, "including all that Territory commonly called the Western Reserve Of Connecticut." Lorain County Recorder, Official Records (O.R.) Vol. 392 Page 133, 141. In the margins of the patent as recorded, there are notations regarding exemplification, *id.* at 142, and certification from the General Land Office, *id.* at 133.

The county recorder is a ministerial officer whose powers and duties are limited to those prescribed by statute or necessarily implied therefrom. *See Preston v. Shaver*, 172 Ohio St. 111, 173 N.E.2d 758 (1961); 1940 Op. Att'y Gen. No. 2857, vol. II, p. 911; *accord* 1996 Op. Att'y Gen. No. 96-019; 1986 Op. Att'y Gen. No. 86-006. The duty of the county recorder with respect to the recording of documents generally is set out in R.C. 317.13(A), which provides that "the county recorder shall record in the proper record ... all ... instruments of writing that are required or authorized by the Revised Code to be recorded and that are presented to the recorder for that purpose." Conversely, the county recorder is expressly empowered to refuse to record an instrument of writing that is not of a type required or authorized to be recorded. *See* R.C. 317.13(B); *see also Preston v. Shaver*; *Churchill v. Little*, 23 Ohio St. 301 (1872); *accord State ex rel. Puthoff v. Cullen*, 5 Ohio App. 2d 13, 16, 213 N.E.2d 201, 203 (Lucas County 1966); 1996 Op. Att'y Gen. No. 96-019.

A land patent is the instrument by which a government, in particular the government of the United States, conveys title to public lands. *See generally In re Mauk*, 56 B.R. 445 (Bankr. N.D. Ohio 1985). R.C. 5301.38 provides authorization for the recording of land patents as follows:

> Patents for lands lying within this state, granted to any person by the president of the United States, and copies of such patents, certified under the official seal of the commissioner of the general land office of the United States, and exemplifications of the record of the general land office of any patent recorded there, may be recorded in the office of the county recorder of the county in which such lands, or a part thereof, are situated.

A county recorder has no authority to record a land patent that does not fall within the provisions of R.C. 5301.38. 1986 Op. Att'y Gen. No. 86-006 (syllabus).

The land patent described in your request was executed in 1801. Ohio had not yet been admitted to the union as a state in 1801. Thus, at the time this particular land patent was granted, the lands of the Western Reserve were within neither the State of Ohio nor Medina County. It is not clear from the language of R.C. 5301.38 whether the authority to record patents pertains only to lands lying in Ohio and a particular Ohio county at the time of the grant, or whether it is sufficient that the lands are currently located in Ohio and a particular Ohio county. R.C. 317.14, however, expressly addresses instances where a piece of land becomes situated in a different county because of boundary changes or formation of a new county. In such instances, copies of instruments of conveyance that were recorded in the old county may be recorded again in the new. It appears, therefore, that where the General Assembly has intended to authorize the re-recording of land conveyances when location has been affected by boundary changes, it has done so expressly. Because R.C. 5301.38 has no such provisions, it should not be construed as pertaining to land patents granted before Ohio became a state.

Nonetheless, even if we concede that R.C. 5301.38 is ambiguous on the above point, the patent you have described still does not satisfy the requirements of R.C. 5301.38. R.C. 5301.38 pertains only to patents that are granted to a "person." The term "[p]erson," as used in any statute, unless another definition is provided in such statute or a related statute, includes "an individual, corporation, business trust, estate, partnership, and association." R.C. 1.59(C). It specifically does not include a "[s]tate," which term is defined separately at R.C. 1.59(G) as including "any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legislative authority of the United States of America." No alternative definition of the term "person" is provided in R.C. 5301.38 or related statutes. Accordingly, the definition at R.C. 1.59(C) applies to the term "person" as used in R.C. 5301.38.

Pursuant to the authority granted by the Act of Congress of April 28, 1800, the land patent in your question was executed to "Jonathan Trumbull, Esquire, Governor of the State of Connecticut, and his successors in Office." *See* Ch. 38, 2 Stat. 56 (1845). This language indicates that the grant

was not to Jonathan Trumbull as an individual, but rather was made to him in his official capacity as Governor of the State of Connecticut. As asserted in *Holmes v. Cleveland C. & C. R. Co.*, 93 F. 100, 102 (N.D. Ohio 1861), "title was made to the state of Connecticut by the United States under the act of April 28, 1800." *See also Hogg v. Beerman*, 41 Ohio St. 81, 85 (1884) (explaining that when Governor Trumbull accepted the patent, "ownership of soil—land and water—by express conveyance, sanctioned by the sovereign power, vested in the state, (represented by its governor) in trust for [the state's] grantees"). Thus, the land patent was not granted to a person, but to a state, *i.e.*, the State of Connecticut. R.C. 5301.38 does not authorize the recording of a land patent granted to a state, nor is there any other statute authorizing or requiring the recording of such a patent.

It is, therefore, my opinion, and you are hereby advised that:

1. A county recorder has no authority to record a land patent except as provided by R.C. 5301.38. (1986 Op. Att'y Gen. No. 86-006, approved and followed).

2. R.C. 5301.38 does not authorize a county recorder to record a copy of the original land patent of the Western Reserve Territory, which was executed on March 2, 1801, by the President of the United States for the purpose of conveying title in the soil of that territory to the State of Connecticut through the office of its Governor.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

December 29, 1997

The Honorable Dean Holman
Medina County Prosecuting Attorney
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Medina, Ohio 44256

SYLLABUS: 97-055

1.A county recorder has no authority to record a land patent except as provided by R.C. 5301.38. (1986 Op. Att'y Gen. No. 86-006, approved and followed).

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