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PHOTOGRAPHIC OR PHOTOSTATIC COPY OF DEED TO REAL ESTATE — SUCH INSTRUMENT NOT ENTITLED TO RECORD IN COUNTY DEED RECORDS — COUNTY RECORDER HAS NO RIGHT NOR DUTY TO RECEIVE AND RECORD SUCH INSTRUMENT.

SYLLABUS:

An instrument purporting to be a photographic or photostatic copy of a deed to real estate is not entitled to record in the deed records of a county, and the county recorder has neither the right nor duty to receive and record it.

Columbus, Ohio, August 8, 1942.

Honorable Manning D. Webster, Prosecuting Attorney,
Pomeroy, Ohio.

Dear Sir:

I have your letter of recent date requesting my opinion relative to the duty of the county recorder to receive and record a photographic or photostatic copy of a deed. Your letter reads as follows:

> "The county recorder has requested that I secure an opinion from you on the following:
>
> There has been presented to the county recorder copy of a deed conveying real estate within this county. The person presenting the same stated that the original had been lost or misplaced. The recorder would like to know whether it is his duty to receive and record this photographic copy the same as though it were the original deed.
>
> Also, would it make any difference whether the copy were a photostatic copy?"

The statutes of Ohio have laid down specifically the requisites of a deed, mortgage or other instrument for the conveyance of lands. Section 8620, General Code, being a part of the statute of frauds, provides:

> "No lease, estate or interest, either of freehold or terms of years, or any uncertain interest of, in, or out of lands, tenements, or hereditaments, shall be assigned, or granted except by deed, or note in writing, signed by the party so assigning or granting

it, or his agent thereunto lawfully authorized, by writing, or by act and operation of law."

Section 8510, General Code, reads as follows:

"A deed, mortgage, or lease of any estate or interest in real property, must be signed by the grantor, mortgagor, or lessor, and such signing be acknowledged by the grantor, mortgagor, or lessor in the presence of two witnesses, who shall attest the signing and subscribe their names to the attestation. Such signing also must be acknowledged by the grantor, mortgagor, or lessor before a judge of a court of record in this state, or a clerk thereof, a county auditor, county surveyor, notary public, mayor, or justice of the peace, who shall certify the acknowledgment on the same sheet on which the instrument is written or printed, and subscribe his name thereto."

This statute seems to make it an absolute prerequisite to the validity of a deed or other instrument of conveyance that it be *signed* by the grantor, that the attestation by the witnesses be *signed* by them and that the certificate of the notary or other officer be *signed* by him. There is no provision in the statute and no inference can be drawn from it that a *copy* of an instrument of conveyance could be regarded as an original instrument no matter how that copy is produced.

Section 8543, General Code, being a part of the same chapter, provides:

"All other deeds and instruments *of writing* for the conveyance or incumbrance of lands, tenements, or hereditaments, executed agreeably to the provisions of this chapter, shall be recorded in the office of the recorder of the county in which the premises are situated, and until so recorded or filed for record, they shall be deemed fraudulent, so far as relates to a subsequent bona fide purchaser having, at the time of purchase, no knowledge of the existence of such former deed or instrument." (Italics mine)

Section 2757, General Code, provides as follows:

"The recorder shall keep four separate sets of records, namely: First, a record of deeds, in which shall be recorded all deeds, powers of attorney, and other instruments *of writing* for the absolute and unconditional sale or conveyance of lands, tenements and hereditaments; Second, a record of mortgages, in which shall be recorded all mortgages, powers of attorney, or other instruments *of writing* by which lands, tenements, or here-

ditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or incumbered in law; Third, a record of plats, in which shall be recorded all plats and maps of town lots, and of the subdivisions thereof, and of other divisions or surveys or lands; Fourth, a record of leases, in which shall be recorded all leases and powers of attorney for the execution of leases. All instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record." (Italics mine.)

Referring to the provisions of Section 8510, it is said in 35 O. Jur. p. 82:

"It has long been the rule in Ohio that any such instrument defectively executed, i.e., which fails to conform in all respects to this provision, is not entitled to record and derives no efficacy from its admission to record."

It seems unnecessary to refer to the numerous cases which are cited as supporting that statement.

The only reference which I find in the statutes of Ohio to the use of a photographic or photostatic process in connection with public records is in Section 32-1, General Code, which reads as follows:

"Any officer, office, court, commission, board, institution, department, agent or employee of the state, county, or any political subdivision being charged with the duty or authorized or required by law to record, preserve, keep, maintain or file any record, document, plat, paper or instrument in writing, may, whenever any such officer, office, court, commission, board, institution, department, agent, or employee of the state, county, or any political subdivision shall deem it necessary, for the purpose of recording or copying same; preserving and protecting same, reducing space required for storage or filing of same, or any similar purpose, have or cause to have any or all such records recorded, copied or reproduced by any photostatic, photographic or miniature photographic process which correctly and accurately copies or reproduces, or forms a medium of copying or reproducing, the orginal record, document, plat, paper, or instrument in writing. When so copied or reproduced to reduce space required for storage or filing such records, the original filing record may be destroyed or otherwise disposed of, provided, however, that no such original filing records shall be destroyed or otherwise disposed of unless nor until the time for filing legal proceedings based on such instruments shall have elapsed. Such copies or reproductions shall have the same force and effect at law as the original record, and may be offered in like manner and shall be received as evidence in any court where such original record could have been so introduced."

It will be noted that in this section also, the instruments which any of the officers named are required to record are referred to as any *"document * * * paper, or instrument in writing."*

I note also that the language of the above section, in describing a photographic or photostatic process, uses the words "which correctly and accurately *copies or reproduces* or forms a medium of copying or reproducing, the *original* record, document, plat, paper, or instrument in writing."

The conclusion is irresistible that the law regards photographic or photostatic processes merely as a means of producing a copy.

Section 32-1 is a provision of law which was first enacted in 1929. Prior to that time the manner of recording was provided by Section 2759, General Code. This section is still in force and reads as follows:

> "The county recorder shall record in the proper record in a fair and legible handwriting, typewriting, or printing, all deeds, mortgages, or other instruments of writing required by law to be recorded, presented to him for that purpose. They shall be recorded in regular succession according to the priority of presentation, entering the file number at the beginning of such record. At the foot of the record of each instrument he shall record the date and precise time of day when it was presented for record."

It will be noted that in this section also, the statute referred specifically to *"instruments of writing,"* but limited the manner of recording to "legible handwriting, typewriting, or printing."

One of my predecessors in construing this statute held that the language of Section 2759, General Code, was not broad enough to include the process of photographic or photostatic printing. (1922, Opinions Attorney General, p. 290.)

There is no essential difference, so far as concerns the matter we are considering, between a photographic copy and a photostatic copy. Both are photographic, and both are copies or images, the only difference being in the method. A photographic process strictly implies that the image of the original is taken on a negative plate or film and then reproduced by a printing process on paper, while the character of the photostatic process is indicated by Webster's definition of "photostat" as: "A de-

vice for making photographic copies of drawings, manuscripts, maps, records, etc., directly upon the surface of prepared paper with the image in correct position and not reversed as in a negative."

Answering your question specifically, it is my opinion that an instrument purporting to be a photographic or photostatic copy of a deed to real estate is not entitled to record in the deed records of the county and that the county recorder has neither the right nor the duty to receive and record it.

Respectfully,

THOMAS J. HERBERT
Attorney General.