

ORIGINAL

IN THE SUPREME COURT OF OHIO

Case No. 10-2029

Original Action in Mandamus

State ex rel. Data Trace Information Services, LLC, et al.,

Relators,

v.

Recorder of Cuyahoga County, Ohio,

Respondent.

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MERITS BRIEF OF RESPONDENT RECORDER OF CUYAHOGA COUNTY, OHIO

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INTRODUCTION

This case is not about public records, the ability of the press to gather and report the news, or the efficiency of the real estate and title insurance industries. This is a case about one thing only: money. Relators want to opt out of the system enacted by the General Assembly to fund the Ohio Housing Trust Fund and the operations of county recorders across the state by obtaining copies of recorded instruments without paying the \$2 per page statutory fee. But payment of that fee is not optional, and relators' claims should be denied.

The Cuyahoga County Recorder (the "Recorder") agrees that relators can have electronic copies of recorded documents, and relators agree that they must pay a fee for those copies. The only question for this Court is how much relators have to pay. The General Assembly says the price is \$2 per page. But relators do not want to pay that much, so they are asking this Court to stretch the Public Records Act beyond its intended purpose to grant them a substantial discount. The Court should decline relators' invitation to rewrite the Revised Code to give them a special deal, especially since that deal would come at the direct expense of Ohio taxpayers and the state-wide beneficiaries of the Ohio Housing Trust Fund.

The law as enacted by the General Assembly requires county recorders to charge \$2 per page for copying recorded documents. That is true regardless of the technology used to make the copies or whether the requesting party invokes the Public Records Act. The Court therefore should enter judgment in favor of the Cuyahoga County Recorder on each of relators' claims.

STATEMENT OF THE CASE

The single dispositive issue is whether relators must pay \$2 per page for the Recorder to make electronic copies of recorded documents under the Recorder Statute (R.C. 317.32), or whether they can obtain copies of those documents at “cost” under the Public Records Act (R.C. 149.43). The statutory analysis necessary for the Court to answer this question is straight forward and well grounded.

By purpose, documents recorded with a county recorder are available for public inspection, and by statute, county recorders must make copies of recorded documents for a flat \$2 per page “photocopying” fee. R.C. 317.32(I). That per-page charge serves two purposes: one half is payable to the county treasury to fund the county recorder’s operations, and the other half is payable to the Ohio Housing Trust Fund to provide assistance to low- and moderate-income Ohioans.

Relators are private companies in the business of re-selling public records at a profit. While relators do not dispute that the Recorder must charge \$2 per page for making paper copies of recorded documents, they contend that the Recorder cannot charge that fee for making electronic copies of those same documents. According to relators, the Public Records Act limits the Recorder to charging its “cost” of electronically copying recorded documents because making electronic copies and “photocopying” use different technologies. Relators, however, ignore the controlling statute – R.C. 9.01 – which conclusively forecloses their argument.

Under R.C. 9.01, copying recorded documents using any “electronic data processing” or “machine readable means ... which ... provides a medium of copying

... or reproducing the original record” has “the same effect at law as ... any other legally authorized means.” R.C. 9.01. Thus, electronically copying a recorded document is legally the same as “photocopying” a recorded document. This makes sense. By enacting R.C. 9.01, the General Assembly has ensured that the State and its counties can invest in modern technology to improve service and efficiency without fear of losing their funding in the process. The Recorder therefore must charge, and relators must pay, the \$2 per page fee for electronically copying recorded documents because making those copies falls within the “electronic data processing” and “machine readable means” recited in R.C. 9.01.

The Ohio Attorney General addressed a nearly identical issue in 1933 and reached the same conclusion. Analyzing the General Code predecessors to R.C. 9.01 and 317.32, the Ohio Attorney General concluded that, although the fee under the then-effective Recorder Statute applied to making “printed” copies, county recorders also could charge that fee for making copies using “photostatic” and “photographic” technologies. 1933 Ohio Atty.Gen.Ops.No. 167 (Apx. 21). R.C. 9.01 and 317.32 now recite more modern technologies, but the analysis and conclusion remain the same. Under R.C. 9.01, the \$2 per page fee applies regardless of whether the Recorder uses “photocopying” or more advanced document reproduction technology.

Despite its central – and dispositive – importance to this case, relators do not cite, let alone analyze the application of, R.C. 9.01. It therefore is undisputed that, under R.C. 9.01, the \$2 per page copying fee applies equally to electronic copying and “photocopying” recorded documents. Accordingly, relators cannot establish any

right to mandamus and the Court should enter judgment in the Recorders' favor on each of relators' claims.

Relators' arguments do not change the analysis or the conclusion. While recorded documents are by purpose publicly available, they are not "records" and therefore not "public records" because they do not "document the organization, functions, policies, decisions, procedures, operations or other activities" of a county recorder. But even if recorded documents met the definition of a "public record," the Public Records Act still would not apply because the Recorder Statute prohibits county recorders from copying recorded documents without payment of the \$2 per page fee. Relators therefore cannot rely on the Public Records Act to obtain electronic copies of recorded documents for less than \$2 per page.

Relators also cannot avoid paying the \$2 per page fee by asking the Court to rewrite their requests as being for copies of the Recorder's daily backup cd-roms (referred to as "master CDs") because that is not what they requested. Relators' actual request was for electronic copies of specific recorded documents, not the media on which they are backed up. Those are the only requests at issue, so whether relators can obtain copies of the "master CDs" is not before the Court. But even if relators had asked for copies of the "master CDs," their claims would still fail because the "master CDs" are not subject to the Public Records Act.

The arguments by Relators' three amici also do not change the analysis or the conclusion. This case will not affect the press or its ability to gather and report the news as suggested by two amici. News organizations – just like everyone else –

can search, view and print every recorded document *for free* using the Recorder's website, search and view every recorded document *for free* using the Recorder's public access terminals, and print copies of every recorded document for 5¢ per page using the printers available at the Recorder's offices. These free or nearly-free options will remain available to the press irrespective of how the Court rules because none requires the Recorder to make any copies. Likewise, the lone argument of the Ohio Land Title Association, that enforcement of the \$2 per page fee possibly could increase the cost for certain real estate transactions, is merely speculative and confirms that relators' only remedy – to the extent one is warranted at all – is through the General Assembly, not this Court.

For these reasons, the Court should hold as a matter of law that the statutory fee set forth in R.C. 317.32(I) applies to making electronic copies of recorded documents by operation of R.C. 9.01 and enter judgment in favor of the Recorder on each of relators claims.

STATEMENT OF RELEVANT FACTS

Since this case turns on a single question of statutory construction, the only relevant facts are how the Recorder receives and records documents and relators' requests for electronic copies of those documents. Relators, however, offer an extensive, 24-page, conspiracy-laden recitation of supposedly "uncontradicted" facts that mostly are irrelevant and often are contradicted by the record evidence. Rather than responding to each of relators' factual misstatements, the Recorder offers a

brief statement of relevant facts, and will respond to relators' misstatements only to the extent necessary in the argument section following its factual statement.

A. County Recorders Under Ohio Law

In the early years of the territories that would become Ohio, the growing need for some guarantee of property rights in real property led to the establishment of the office of county recorder in the Northwest Ordinance of 1787, which was enacted by the Continental Congress under The Articles of Confederation and ratified by the first U.S. Congress in 1789. *See* Act of Aug. 7, 1789, Ch. 8, 1 Stat. 50.

In 1803, the first session of the General Assembly enacted Ohio's initial recorder statute, which established the office of the county recorder under state law and defined its duties. 1 Ohio Laws 134 (Apx. 1). The statutes governing Ohio county recorders have evolved with the enactment of the Revised Statutes in 1880, the General Code in 1910, and the modern Revised Code in 1953, but county recorders' duties have remained remarkably consistent. In 1803, county recorders were obligated to "record all deeds and other writings in regular succession, according to their priority or time of being brought into his office[.]" *Id.* at § 3. Now, county recorder must "record ... all deeds, mortgages, plats, or other 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." R.C. 317.13(A).

Ohio's statutes always have required county recorders to fund their own operations by charging fees for the services they perform. The operations of county recorders initially were funded by a charge of 9¢ per one hundred words recorded or copied. 1 Ohio Laws 134, § 5. The Revised Code now provides for a number of

charges, including a general recording fee of \$14 for the first two pages and \$4 for each successive page (R.C. 317.32(A)), an \$8 fee for recording assignments or satisfaction of mortgages or leases (R.C. 317.32(C)), a \$2 per page fee for transmitting a document by facsimile (R.C. 317.32(J)), and of particular significance, a \$2 per page fee copying recorded documents (R.C. 317.32(I)).

B. The Cuyahoga County Recorder

The process by which the Recorder receives and records documents is not in dispute. When a document is presented for recording, the Recorder scans the document, collects the appropriate fee, and returns the original document to the person who presented it for recording. (Martinez Aff. ¶ 4, Relator Evid., Vol. 3, Tab 26.) The Recorder then saves the scanned digital image to its computerized database. (Mitchell Dep. 15:3-5, Relator Evid., Vol. 1, Tab B.) As a fail-safe measure, the Recorder also copies each day's recordings onto a backup CD, which the relators call the "master CD." (Martinez Aff. ¶ 5; Asfour Dep. 14:4-17, Relator Evid. Vol. 1, Exh. A; Patterson Dep. 32:14-22, Relator Evid., Vol. 1, Exh. E; Am. Compl. ¶ 18.) The Recorder then remits one half of the fee collected to the Ohio Housing Trust Fund. (Davis Dep. 25:10-26:9, Recorder Evid., Ex. 3.)

The Recorder offers the public a variety of options for inspecting or obtaining copies of recorded documents. During business hours, anyone can use the public computer terminals at the Recorder's Office to view the digital images of recorded documents for free and to print copies of the images for 5¢ per page. (Stutzman Aff. ¶ 25-26, Relator Evid., Vol. 2, Tab 14.) Upon request and payment of the \$2-per-page statutory fee, the Recorder provides paper copies of recorded documents by

using a computer to locate, open, and print the requested digital images. (Mitchell Dep. 20:6-16, 21:16-22:2.) Finally, anyone can use the Recorder's website to search for, view, download, save, and print digital images of recorded documents for free. (Schramm Dep. 55:20-56:4, 57:8-15, Recorder Evid., Ex. 2; Patterson Dep. 25:8-12.)

The Recorder's website offers the public access to every document maintained in its computer system. Unfortunately, that unfettered access has led to abuse. For example, overseas data-miners overloaded the system so severely that they repeatedly crashed the website. (Greene Dep. 40:10-15, 40:21-25, Relator Evid., Vol. 1, Tab C.) Other were using the website to commit fraud by downloading images of recorded documents, digitally modifying those images, printing the altered documents, and then presenting them for recordation as if they were original conveyances. (Greene Dep. 40:10-20, 41:1-4.) To thwart those abuses and maintain the integrity and accessibility of its website, the Recorder now places a "COPY" watermark on each image. (Greene Dep. 40:5-41:4; Kandah Dep. 28:20-25, 30:7-21, Relator Evid., Vol. 1, Tab D; Relator Apx. at 1-2.)

C. Relators File Suit To Avoid Paying The \$2 Per Page Statutory Fee For Electronic Copies Of Recorded Documents

Relators are two out-of-state companies¹ that resell copies of publicly-available information, including deeds, mortgages and similar documents recorded by the recorders offices throughout Ohio. (Stutzman Aff. ¶¶ 6-9, 45, 48, 65-67, 95-96; Carsella Aff. ¶¶ 4-5, 9-10, 25-28, 46, Relator Evid. Vol. 2, Tab 11.) For years, relators were able to turn a significant profit reselling copies of documents recorded

¹ Relators also have named two of their employees as nominal relators.

in Cuyahoga County thanks to a deal they struck with a prior elected recorder to purchase digital copies of every document recorded during a given day for a flat fee of \$50. (Stutzman Aff. ¶ 13; Carsella Aff. ¶ 11.) During that same time, the only option for other businesses and members of the public to obtain copies of those documents was to pay the \$2-per-page fee. (Greene Dep. 25:24-26:4, 33:19-21.)

The immediate-past Recorder, Judge Lillian Greene, discovered the side-deal between her predecessor and relators shortly after taking office. (Greene Dep. 39:13-19.) Concerned with the legality of that deal, Judge Greene conducted extensive legal research under the Recorder Statute and the Public Records Act. (Kandah Dep. 36:22-37:16.) She correctly concluded that the Recorder Statute controls and requires the Recorder to charge relators the same \$2 per page fee that it charges everyone else to obtain copies of the same recorded documents. (Greene Dep. 25:24-26:4, 76:25-77:6.) Accordingly, Judge Greene ended her predecessor's special practice of providing relators with copies of all recorded documents at a \$50 per day flat fee in early 2010 and informed relators that they must pay the \$2-per-page statutory fee going forward. (*Id.* at 24:16-26:19.)

Dissatisfied with having to pay the statutory rate, relators responded on October 5, 2010, by requesting electronic copies of two months worth of recorded documents under the Public Records Act. (Am. Compl. ¶ 6, 8, Ex. 1, Ex. 2.) In relevant part, each group of relators made the following requests:

On behalf of [relator], I am writing to request, under the Ohio Open Records act, R.C. 149.43, electronic copies of all documents publicly recorded in the Recorder's Office in the months of July and August 2010. I understand that these documents are currently maintained by

your office in electronic form. [Relator] does not object to you not producing military discharges recorded during those two months.

Alternatively, if it would be less work for you to provide us with electronic copies of only the first 100 documents publicly recorded on each day of July and August 2010, we are willing to accept electronic copies of only those documents in lieu of electronic copies of every document publicly recorded in July and August, 2010.

(Am. Compl. Ex. 1, Ex. 2.) Shortly thereafter, relators filed a mandamus action asking this Court to compel production of electronic copies of the recorded documents “at cost.” (Ohio Supreme Court Case No. 2010-1823.)

Formally responding to relators’ written requests, the Recorder agreed in writing to produce the requested copies upon payment of the \$2 per page statutory fee. Relators ask the Court to believe that the Recorder response was to “offer paper printouts at \$2/page, but not to offer the requested CDs.” (Relator Br. 16.) That is patently false. Responding through counsel, the Recorder stated that it would provide the copies *as requested* upon payment of the statutory fee, as follows:

I confirm the Cuyahoga County Recorder’s prior responses that it will provide the requested materials upon payment of the statutory fee required under R.C. 317.32. The Ohio Open Records Act does not exempt Relators from paying those fees because the requested materials do not “document the organization, functions, policies, decisions, procedures, operations, or other activities of the office,” and because RC 317.32 otherwise constitutes a legislative finding on the “actual cost” of providing the requested materials.

(Relator Evid, Vol. 1, Tab 2.) Eliminating any potential for confusion, Judge Green confirmed under oath that her office would provide relators the electronic copies they requested upon payment of the appropriate fee. (Green Dep. at 32:1-33:21.)

After relators filed their first suit, the Recorder discovered that neither relator had registered with the Secretary of State to conduct business in Ohio and

moved to dismiss their complaint. (Case No. 2010-1823, Nov. 18, 2010 Amended Motion to Dismiss.) Conceding that their failure to register and pay the corresponding fee meant they had no standing to file or maintain their case, relators dismissed their complaint, registered with the Secretary of State, and filed the instant case. (*See Am. Compl.* ¶ 61, 63.)

Several months later, and after taking discovery, relators sent substantively-identical letters to the Recorder. In them, relators attempted to redefine their October 5, 2010, requests for electronic copies of specific recorded documents as instead being requests for copies of so-called “master CDs.” (Relator Evid., Vol. 3, Tab 16; Vol. 2, Tab 13.) The Recorder again responded that it would copy the requested images onto a CD for the statutorily required \$2-per-page fee. (Apx. 33-36) Consistent with relators’ amended complaint, the only requests at issue in this case are relators’ October 5, 2010, requests attached as Exhibits 1 and 2 to their April 12, 2011 Amended Complaint.

D. The Recorder’s Public Records Policy

Finally, relators ask the Court to compel the Recorder to revise its public records policy. Relators, however, do not address the Recorder’s actual public records policy. One of the first acts of the new Cuyahoga County government was to implement a consistent county-wide public records policy. (Recorder’s Evidence, Ex. A.) That policy, which superseded the myriad policies previously adopted by different county offices, departments and agencies, became effective January 10, 2011, and continues to be the policy that applies to the Recorder. (*Id.*)

RECORDER'S PROPOSITIONS OF LAW

Proposition of Law No. 1: While recorded documents are available to the public, they are not “public records” that are subject to R.C. 149.43 because they do not document a county recorder’s organization, functions, policies, decisions, procedures, operations, or other activities.

By purpose and intent, recorded documents are publicly available. *See Roseberry v. Hollister* (1854), 4 Ohio St. 297, 304 (recording document provides public notice of its contents). The Recorder Statute thus requires county recorders to provide public access to recorded documents. *See, e.g.*, R.C. 317.08 (identifying records recorder must keep); 317.081 (county records available for public inspection); 317.082 (redaction of social security numbers); 317.13 (duties of recorder); 317.19 (daily register of deeds and mortgages open to public inspection); 317.21 (records acquired by recorder open to public inspection); 317.27 (“any person” entitled to certified copy of recorded document); 317.32(I) (fee for copying recorded document); 317.35 (recorded plans of public buildings open for public inspection).

The fact that recorded documents are publicly available does not make them “public records” for purposes of the Public Records Act. Instead, the Public Records Act covers only “records” that “serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.” R.C. 149.011(G), 149.43(A)(1). If a document does not meet this definition, it is not a “public record” and is not subject to the Public Records Act. *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 164, 2005-Ohio-4384, 833 N.E.2d 274.

This Court has never addressed whether recorded documents are “records” or “public records” under R.C. 149.011(G) and 149.43(A)(1), respectively. Courts in

other jurisdictions, however, have held that recorded documents are not public records. For example, the court in *Inkpen v. Recorder of Deeds of the County of Allegheny* (Pa.Comm.w. 2004), 862 A.2d 700, held that, while “[a] filed deed or mortgage is a public record in a fundamental sense, because it is a record of a transaction made accessible to the public by august law,” it is not a public record because it is not “a minute, order or decision by the Recorder.” *Id.* at 703-04. Rather, recorded documents “arise from transactions outside the Recorder’s office, and they memorialize actions taken by third-parties.” *Id.* at 703-04. The same is true here.

Recorded documents do not document the organization, functions, policies, decisions, procedures, operations, or other activities of a county recorder. They document and memorialize the independent acts of third parties. This Court therefore should reach the same conclusion as the court in *Inkpen* and hold that, while recorded documents may be available to the public, they are not “public records” under the Public Records Act.

Urging a contrary conclusion, relators argue that recorded documents are “public records” because a county recorder is required to keep them to fulfill its statutory obligations. As support, relators cite *Dayton Newspapers, Inc. v. City of Dayton* (1976), 45 Ohio St.2d 107, 341 N.E.2d 576. That case, however, was decided in 1976 under a prior iteration of the Public Records Act that expressly enumerated documents “required to be kept” as a category of “public records.” *Id.* at 108. The General Assembly in 1985 eliminated the “required to be kept” category from the

Public Records Act, *see* Am. Sub. H.B. No. 238, 141 Ohio Laws, Part II, 2761, 2774, so the *Dayton Newspapers* opinion is neither controlling nor persuasive authority.

Now, “simply because an item is received and kept by a public office does not transform it into a record under R.C. 149.011(G).” *Dispatch Printing*, 106 Ohio St.3d at 166. Instead, the modern definition of “records” requires three elements: (i) a document that (ii) is created by or under the jurisdiction a public office and (iii) serves to document the organization, functions, policies, decisions, procedures, operations or other activities of the office. R.C. 149.011(G). The second prong of this definition is similar to the definition at issue in *Dayton Newspapers*, but that is no longer enough. Relators also must prove that recorded documents are a “written record of the structure, duties, general management principles, agency determinations, specific methods, processes, or other acts of the” Recorder. *Dispatch Printing*, 106 Ohio St.3d at 164. *See State ex rel. Beacon Journal Publ’g Co. v. Bond* (2002), 98 Ohio St.3d 146, 2002-Ohio-7117, 781 N.E.2d 180, ¶ 9 (“To the extent that an item does not serve to document the activities of a public office, it is not a public record and need not be disclosed.”).

Relators attempt to meet that requirement by arguing that recorded documents are “records” (and therefore “public records”) because they are stamped with the time and date of recordation and an automated file number. The Recorder is not required by law to actually mark that information on recorded documents. R.C. 317.13(A). Rather, it must record that information “on the record of each instrument.” *Id.* The Recorder’s practice of stamping the date, time and file number

on the instrument itself thus serves as an additional cross-reference to facilitate easy use of the publicly-available indexes a county recorder must create, *see* R.C. 317.13(A); 317.18; 317.19; 317.20; 317.201; 317.21, not a statutory requirement. The stamps therefore are an “administrative convenience” that does not document the organization, functions, policies, decisions, procedures, operations or other activities of the office. *See State ex rel. DeGroot v. Tilsey*, 128 Ohio St.3d 311, 313, 2011-Ohio-231, 943 N.E. 2d 1018, ¶ 7 (information kept as matter of “administrative convenience” not a “public record”), citing *Dispatch Printing*, 106 Ohio St.3d at ¶ 25.

Relators do not cite, and the Recorder is not aware of, any decision by this or any other court holding that stamping a third-party document with a date and index number transforms it into a public record. By way of example, court filings are stamped with the time and date of filing, but that is not what makes them public records. *See State ex rel. Striker v. Smith*, 2011-Ohio-2878, at ¶ 21. Instead, those documents are public records because they are “used by a court to render a decision.” *State ex rel. WBNS TV, Inc. v. Dues*, 101 Ohio St.3d 406, 410-411, 2004-Ohio-1497, 805 N.E.2d 1116, ¶ 27. In contrast, a county recorder does not make any deliberative use of recorded documents; it merely indexes and hold them. Recorded documents therefore do not document the organization, functions, policies, decisions, procedures, operations or other activities of a county recorder.

Finally, acceptance of relators’ analysis would vitiate R.C. 317.32(I). Relators claim that they are entitled to electronic copies of recorded documents at “cost” because the Public Records Act trumps the Recorder Statute. But if so, anyone who

wanted a copy of a recorded document could invoke the Public Records Act to avoid paying all but a few cents of the \$2 per page fee. That would be true under relators' analysis irrespective of the media on which the document was stored and the copy was made, be it paper, microfilm, hard drive or cd-rom. Such an interpretation must be rejected because it would not give any effect to R.C. 317.32(I). *See Franklin Cty. Sheriff's Dept. v. State Employment Rtns Bd. (SERB)* (1992), 63 Ohio St.3d 498, 501-502, 589 N.E.2d 24 (giving effect to both Public Records Act and statute governing State Employment Relations Board).

Although recorded documents are available to the public, they are not "records," so they are not "public records," either. The Court therefore should rule as a matter of law that, while recorded documents are publicly available under Title 317 of the Revised Code, they are not "records" under R.C. 149.011(G) and thus not "public records" under R.C. 149.43(A)(1).

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Proposition of Law No. 2: County recorders must charge the fee set forth in R.C. 317.32(I) for making electronic copies of recorded documents.

As a creature of statute, a county recorder must perform the duties proscribed in Title 317 of the Revised Code. *See State ex rel. Preston v. Shaver* (1961), 172 Ohio St. 111, 114, 173 N.E.2d 758. Those duties include charging a "base fees for the recorder's services and housing trust fund fees" in connection with

performance of its duties. *See* R.C. 317.32. R.C. 317.32(I) sets the fee that a county recorders must charge and collect for copying a recorded document at \$2 per page:

For photocopying a document, other than at the time of recording and indexing as provided for in division (A) of this section, a base fee of one dollar and a housing trust fund fee of one dollar per page, size eight and one-half inches by fourteen inches, or fraction thereof.

R.C. 317.32(I). County recorders have no authority to charge a copying fee that is more or less than the statutory amount. *See* R.C. 325.32 (prohibiting recorder from charging less than fee required by statute); R.C. 325.36 (prohibiting collection of fee not required by statute). *See also*, 1994 Ohio Atty.Gen.Ops. No. 006, at 2-22 (county recorder has no authority to decrease copying fee under R.C. 317.32(I)).

Regardless of whether recorded documents are “public records,” the fact that relators have requested electronic copies does not exempt them from paying the \$2 per page fee for three reasons. First, the Public Records Act by its terms yields to the fee provisions of the Recorder Statute. Second, under R.C. 9.01, making electronic copies of recorded documents constitutes “photocopying” as a matter of law. Third, R.C. 317.32(I) constitutes a legislative finding that the “cost” for copying recorded documents is \$2 per page. County recorders therefore must charge the fee set forth in R.C. 317.32(I) for making electronic copies of recorded documents.

A. R.C. 317.32(I) Applies Regardless Of Whether Recorded Documents Are “Records” Under R.C. 149.011(G)

As set forth above, recorded documents are not “records,” so relators are not entitled to copies for less than the \$2 per page statutory fee. But if the Court holds that recorded documents are “records” under R.C. 149.011(G), relators claims still

fail because the Public Records Act excludes all “[r]ecords the release of which is prohibited by state or federal law.” R.C. 149.43(A)(1)(v).

When the General Assembly enacts a statute that provides a specific fee for obtaining a copy of what otherwise would be a public record, the specific fee statute prevails over the more general Public Records Act. *See State ex rel. Slagle v. Rogers*, 103 Ohio St.3d 89, 2004-Ohio-4354, 814 N.E.2d 55. In *Slagle*, the relator sought to obtain trial transcripts without paying the fee required under R.C. 2301.24 by requesting copies at “cost” under the Public Records Act. *Id.* at 90. Rejecting that claim, this Court held that R.C. 2301.24 controls because it is a specific statute that requires payment of a specific fee, whereas the Public Records Act is a general statute and “[t]he General Assembly did not express its intent that R.C. 149.43 prevail over more specific statutes governing the cost of copies for parties.” *Id.* at 92.

The same is true in this case. R.C. 317.32(I) is a specific statute that requires payment of a specific fee – \$2 per page – for copying recorded documents. The Recorder Statute therefore controls over the more general Public Records Act because the General Assembly did not express its intent that R.C. 149.43 should prevail over the more specific provisions of R.C. 317.32(I).

This conclusion does not conflict with the purpose of the Public Records Act, which is “to expose government activity to public scrutiny.” *State ex rel. WHIO-TV-7 v. Lowe* (1997), 77 Ohio St.3d 350, 355, 673 N.E.2d 1360. The Recorder Statute already requires county recorders to maintain multiple indexes of recorded documents so the public can search for and identify any document of interest,

including a daily register that is “open to the inspection of the public.” R.C. 317.18, 317.10. County recorders also must provide the public with certified and uncertified copies of recorded documents on demand and payment of the proper fees. R.C. 317.32(B), (I). Applying the Public Records Act to recorded documents therefore would not expose government activity to additional scrutiny because the Recorder Statute already subjects county recorders to unfettered scrutiny. The Court therefore should hold that R.C. 317.32(I), not the Public Records Act, governs the fees that must be paid for copies of recorded documents.

B. As A Matter Of Law, Electronically Copying Recorded Documents Constitutes “Photocopying” Under R.C. 9.01

Relators argue that, even if the Court gives effect to the Recorder Statute over the Public Records Act, they do not have to pay \$2 per page because making an electronic copy does not constitute “photocopying” under R.C. 317.32(I). According to Relators, use of the word “photocopying” in that statute ends the inquiry. Relators, however, ignore the controlling statute: R.C. 9.01.

R.C. 9.01 authorizes county recorders to electronically copy recorded documents, and further provides that electronically copying a document has “the same effect at law” as copying a document “by any other legally authorized means[.]” RC 9.01. In relevant part, R.C. 9.01 states:

When any ... office ... of a county ... who is charged with the duty ... to record ... or to make or furnish copies of any [document, plat or instrument] deems it necessary or advisable ... to do so by means of any ... electronic data processing [or] machine readable means ... which ... provides a medium of copying, recording or reproducing the original record, document, plat or instrument in writing, such use of any of those processes, means, or displays for any such purpose is

hereby authorized [and] have the same effect at law as ... any other legally authorized means[.]

R.C. 9.01 controls the outcome of this case because electronically copying recorded documents is both authorized and has the “the same effect at law” as “photocopying” recorded documents.² The \$2 per page statutory fee under R.C. 317.32(I) therefore applies by operation of R.C. 9.01.

By its terms, R.C. 9.01 applies to any “office of a county ... who is ... required to record ... any record, document, plat, ... paper, or instrument in writing.” R.C. 9.01. County recorders are county offices that are required to record records, documents, plats and instruments, so they can use any of the means enumerated in R.C. 9.01 to record those documents. *See* R.C. 317.13 (recorder can use “any authorized ... electronic process” to record documents). *See also* 1990 Ohio Atty.Gen.Ops. No. 057 (“Thus, the county recorder may record documents in the manner prescribed in R.C. 317.13 and R.C. 9.01.”); 1965 Ohio Atty.Gen.Ops. No. 173 (R.C. 9.01 “applies to any records that the County Recorder would be required to maintain according to Section 317.08, Revised Code”). The same is true for electronically copying digitally-recorded documents, since R.C. 9.01 applies equally when “any county office [is] required ... to make or furnish copies.” R.C. 9.01. *See* 1933 Ohio Atty.Gen.Ops. 167 (under R.C. 9.01 predecessor, recorder could charge copying fee for using technology not enumerated in predecessor to R.C. 317.32(I)).

² Peter Shulman, a professor retained by relators, admits that the magnetic means and “electronic data processing” recited in Revised Code 9.01 “are broad terms that effectively embrace every widely used form of storing, manipulating, and reproducing information on a computer now in use.” (Shulman Report at 1, Relators Evid. Vol. 3, Tab 34.)

Applying R.C. 9.01 to the Recorder Statute in this way is neither new nor novel. To the contrary, it dates back to at least to 1929, when the General Assembly enacted G.C. 32-1, the predecessor to R.C. 9.01. As enacted, G.C. 32-1 provided:

Whenever any officer, office, court, commission, board, institution, department, agent, or employee of the state, or of any county of more than 50,000 population, according to the next preceding federal census, is required or authorized by law, or has the duty to record or copy any document, plat, paper, or instrument of writing, such recording or copying, may be done by any photostatic or photographic process which clearly and accurately copies, photographs, or reproduces the original document, plat, paper or instrument of writing.

G.C. 32-1 (Apx. 8). Foreshadowing the key issue in this case, Ohio Attorney General John W. Bricker³ concluded in 1933 that, under G.C. 32-1, a county recorder could collect the statutory fee for making photostatic or photographic copies of recorded documents even though the then-effective recorder statute, G.C. 2778, required payment for copies based on the number of words “actually written, typewritten or printed.” 1933 Ohio Atty.Gen.Ops. No. 167, at 194 (Apx. 21). Although photostatic or photographic reproduction did not constitute “printing” when that word was added to the Recorder Statute in 1902, Attorney General Bricker concluded that, by operation of G.C. 32-1, the recorder fee could nonetheless be collected for making photographic and photostatic copies.

Despite the remarkable evolution of technology since Attorney General Bricker’s opinion almost eighty years ago, his analysis could not be more germane to the issue now before the Court. Attorney General Bricker explained:

³ Mr. Bricker served as the Ohio Attorney General from 1933 to 1937 before being elected Governor in 1938.

Even though the ordinary conception of printing at the time of the enactment of 2778 involves reproduction by the use of pressure, it does not follow that a new and different method of obtaining the same result is not within the meaning of the term. It is a well settled principle that the law becomes applicable to new inventions as new inventions come into use, without the same being especially included. This principle was applied in an opinion of this office, reported in Opinions of the Attorney General, 1913, Volume I, page 137, where a peddler's license law, in terms applicable to only to one using a one-horse vehicle, two-horse vehicle, a boat, watercraft or a railroad car was deemed applicable to a peddler who used a motor truck.

In view of the foregoing, I am of the opinion that the photostatic or photographic process, authorized by section 32-1 of the General Code, is included within the term "printing" as used in section 2778, and therefore a county recorder using such process for recording instruments, may collect the fees specified in that section.

1933 Ohio Atty.Gen.Ops. No. 167, at 196 (Apx. 24). The same is as true now as it was then. R.C. 317.32(I) and 9.01 must be read together, so the \$2 per page fee applies to electronic copies.⁴ It therefore is not surprising that the history professor retained by relators identified R.C. 9.01 as one of "two provisions of the Ohio Revised Code ... that address the technologies of duplication allowed to County Recorders." (Shulman Report at 1, Relator Evid, Vol. 3, Tab 34.)

To conclude that R.C. 9.01 does not apply effectively would prohibit any county recorder that uses modern technology from ever collecting the statutory fee.

⁴ Amicus Ohio Newspaper Association and The Reporter's Committee for Freedom of the Press rely on a later Ohio Attorney General Opinion, 1994 Ohio Atty.Gen.Ops. No. 006, that concluded a county recorder could not charge the statutory per-page fee for copying a microfilm role or fiche containing hundreds of pages of recorded documents. But in reaching that conclusion, the Ohio Attorney General did not consider whether recorded documents are "records" or "public records" under R.C. 149.011(G) and 149.43, it did not consider or apply R.C. 9.01 to reach that conclusion, and it did not cite, overrule or withdraw its 1933 opinion. Therefore, to the extent the Court seeks guidance from an opinion of the Ohio Attorney General, it should look to Attorney General Bricker's 1933 opinion, which is directly on point.

Carried to its logical conclusion, relators' narrow view would mean that printing a digital image of a recorded document to paper is not "photocopying." Since that is how Cuyahoga County records, stores and copies recorded documents, it could never charge the \$2 per page fee, even when a member of the public requests a paper copy. There is no evidence the General Assembly intended that result when it authorized county recorders to use "electronic data processing" and "machine readable means" to record and copy documents. *See* RC 9.01. To the contrary, R.C. 9.01 embodies the legislative intent that the Recorder Statute applies when county recorders use modern means to record *and* copy documents in the same way that it applies when less advanced "photocopying" technologies are used.

Instead of applying R.C. 9.01 to avoid the absurd result of a county recorder not being able to charge the \$2 per page fee for paper copies of digitally-recorded documents, relators rely on the opinion of a history professor to argue that using a computer and laser printer to print a paper copy of a digital image constitutes "photocopying." According to relators' professor, "photocopying" embodies three prerequisites: (i) it requires paper; (ii) it produces one physical page at a time; and (iii) it must use dry toner as its "ink." (Relator Br. 34; citing Shulman Report at 10-12.) There is no evidence the General Assembly intended R.C. 317.32(I) to be so restricted, especially since that would mean printing a copy with a laser printer would be "photocopying" but printing a copy with an ink jet printer would not.

The opinion of a history professor is not needed to conclude that printing digital images falls within the scope of "photocopying" under R.C. 317.32(I). By its

terms, R.C. 9.01 provides that printing a digital image of a recorded document to paper (using a laser printer, an ink jet printer or any other printing technology) is authorized and has the “the same effect at law” as “photocopying.” R.C. 9.01. That is precisely the conclusion reached by the Ohio Attorney General in 1933, albeit in the context of more primitive technology. For the same reason, making an electronic copy using “electronic data processing” or “machine readable means” constitutes “photocopying” by operation of R.C. 9.01, so county recorders may charge the statutory fee for making electronic copies of recorded documents.

In sum, by enacting R.C. 9.01, the General Assembly has ensured that county recorders can use new technologies as they are invented without waiting for the Revised Code to be amended time and again and without fear of losing their funding. That including collection of the fees set forth in R.C. 317.32(I) for making electronic copies, just as Attorney General Bricker concluded in 1933 that “printing” includes photographic and photostatic copying. The Court therefore should hold that, as a matter of law, county recorders may charge the fee set forth in R.C. 317.32(I) for making electronic copies of recorded documents.

C. R.C. 317.32(I) Constitutes A Legislative Finding As To The “Cost” For The Recorder To Copy Recorded Documents

Finally, even if the “cost” provisions of the Public Records Act were to apply, which they do not, R.C. 317.32(I) constitutes a legislative finding that the cost for a county recorder to copy a recorded document is \$2 per page.

The General Assembly has identified two purposes for the fees required under R.C. 317.32: to fund the operations of county recorders throughout the state

and to fund the Ohio Housing Trust Fund. By statute, one half of the \$2 per page copying fee is payable to the county in which the fee is collected and the other half is payable to the Ohio Housing Trust Fund to support its mission of providing aid for low- and moderate-income housing. See R.C. 174.02, 317.32(I), 319.63(B); Ohio Adm.Code 122:6-1-01 *et seq.* Those are amounts the General Assembly has deemed sufficient to support the statutory missions of both, so they constitute a legislative finding of the per-page “cost” for a county recorder to make copies of recorded documents. Moreover, considering the investment required by the Recorder to digitize recorded documents and the volume of documents that relators seek, a \$2 per page copying fee is both a reasonable and warranted “cost.”

The Public Records Act “does not contemplate that any individual has the right to a complete duplication of voluminous files kept by government agencies.” *State ex rel. Warren Newspapers, Inc. v. Hutson* (1994), 70 Ohio St.3d 619, 624, 640 N.E.2d 174. This Court has thus routinely rejected similarly overbroad public records requests. For example, this Court rejected a request that a police chief, county sheriff, and highway patrol superintendent provide access to “all traffic reports” because it was “first unreasonable in scope and, second, if granted, would interfere with the sanctity of the recordkeeping process itself.” *State ex rel. Zauderer v. Joseph* (1989), 62 Ohio App.3d 752, 756, 577 N.E.2d 444.

This Court similarly denied a request for “any and all records generated ... containing any references whatsoever to” the requesting party, *State ex rel. Dillery v. Icsman* (2001), 92 Ohio St.3d 312, 314, 750 N.E.2d 156, and a request that would

have required a “complete duplication” of a public official’s files, *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 395, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 19. Relators’ requests for “all documents publicly recorded in the Recorder’s Office in the months of July and August 2010” are even more broad than the requests in *Zauderer, Dillery* and *Glasgow*, as they call for duplication of the Recorder’s entire files for two months more than 104,000 pages.

Considering the gross scope of relators’ requests, the Court easily could deny them outright as overbroad, just as it did for the requests in *Zauderer, Dillery* and *Glasgow*. That being said, the Recorder remains willing to provide the requested electronic copies, so long as relators pay the \$2 per page fee. That is what the Recorder said in its written response to relators’ requests, and that is what Judge Green testified at her deposition. Considering the sheer scope of their requests and volume of copies relators seek, the General Assembly’s finding that it costs \$2 per page for a county recorder to copy a recorded document is both reasonable and warranted. The Court therefore should find that the \$2 per page fee applies to copies of recorded documents under the “cost” provisions of the Public Records Act, to the extent it finds that the Public Records Act applies at all.

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Proposition of Law No. 3: The Recorder's public records policy is sufficient and relators have not identified any basis for the Court to compel any change to that policy.

The Public Records Act requires public offices to adopt a policy for handling public record requests. R.C. 149.43(E)(1). Relators devote a substantial portion of their factual recitation to various public records policies, but almost none of their analysis. The apparent reason is that relators cannot establish that mandamus is warranted or appropriate on this issue.

To obtain mandamus under R.C. 149.43, relators must prove: (1) a clear legal right to the relief prayed for; and (2) a clear legal duty on the respondent's part to perform the act. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 26-27, 661 N.E.2d 180; *Glasgow*, 119 Ohio St.3d at ¶ 12. Relators can do neither.

The Public Records Act requires public offices to adopt public records policies, and prohibits policies that limit the number of records that will be made available to a single person or in a given time, or that set a time for responding to a request that is longer than eight hours. R.C. 149.43(E)(1). Relators do not claim that the Recorder has failed to adopt a policy or that its policy violates any of the statutory limitations. Rather, they merely do not like the Recorder's policy so they want the Court to change it. The Public Records Act, however, does not require the Recorder to adopt a policy that relators like, so they are not entitled to mandamus to compel any changes to the Recorder's current public records policy.

Relators further are not entitled to mandamus because their claim is not directed to the Recorder's actual public records policy. While relators attempt to weave some sort of conspiracy regarding the evolution of the Recorder's policy, they

ignore the Recorder's actual public records policy. Effective January 1, 2011, the governmental structure of Cuyahoga County changed to a county executive model pursuant to the recently-approved Cuyahoga County Charter. In one of its first acts, the new Cuyahoga County Council, adopted a new public records policy effective as of January 10, 2011, that superseded the Recorder's then-existing policy. (Recorder Evid. Tab A.) Relators do not address that policy at all, so they have not demonstrated that they have a clear legal right to the relief they seek.

Because the January 3, 2011, policy fulfills the Recorder's duty to adopt a public records policy under R.C. 149.43(E)(1) and relators have not demonstrated that it otherwise falls short of any duty the Recorder may have, the Court should deny relators' claim for mandamus on this issue.

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Proposition of Law No. 4: Relators are not entitled to recover statutory damages or attorneys' fees.

The Court should not award relators any statutory damages or attorneys' fees because they are not entitled to any relief under the Public Records Act. But even if relators could prove a violation of the Public Records Act, the Court still should not award statutory damages or attorneys' fees because the Recorder properly responded to relators' requests and it reasonably believed that the Public Records Act did not require it to provide electronic copies of recorded documents for less than the \$2 per page statutory fee.

Attorneys' fees are discretionary unless a public office fails to respond to a request or fails to fulfill a promise to provide access within a specified time. R.C. 149.43(C)(2)(b). Neither exception applies because the Recorder never promised access within a specified time and it properly responded to relators' requests.

The Recorder first communicated its position to relators six months *before* relators' letters. (Green Dep. at 25:15-26:19.) The Recorder then confirmed its position in writing on November 16, 2010, stating:

I confirm the Cuyahoga County Recorder's prior responses that it will provide the requested materials upon payment of the statutory fee required under R.C. 317.32. The Ohio Open Records Act does not exempt Relators from paying those fees because the requested materials do not "document the organization, functions, policies, decisions, procedures, operations, or other activities of the office," and because RC 317.32 otherwise constitutes a legislative finding on the "actual cost" of providing the requested materials.

(Relator Evid., Vol. 1, Tab 2.) Relators received this response before they filed their complaint on November 24, 2010. An award of attorneys fees therefore is discretionary if the Court finds that the Public Records Act applies and trumps the \$2 per page fee in R.C. 317.32.

The Court should exercise its discretion and not award any attorneys' fees or statutory damages if relators prevail. Statutory damages and attorneys' fees both are subject to reduction based on the circumstances. *See* R.C. 149.43(C)(1), 149.43(C)(2)(b). Reduction is warranted if a well-informed public official would believe that its conduct did not constitute a failure to comply with the Public Records Act, and a well-informed public official would believe that its conduct would

serve the public policy that underlies the authority on which it relied. R.C. 149.43(C)(1); 149.43(C)(2)(c). The Recorder easily satisfies both of these conditions.

Judge Lillian Greene, the Cuyahoga County Recorder at the time of relators' request, acted as a well-informed public official and she believed that requiring payment of the \$2 per page statutory fee did not constitute a failure to comply with the public records act. As a duly-elected common pleas judge from January 1987 to June 2008 and the Cuyahoga County Recorder from July 2008 to January 2011, Judge Greene was well versed in the legal requirements of both the Recorder Statute and the Public Records Act. (Greene Dep. at 6:13-9:5.) In April 2010, Judge Green concluded that, as a statutory office, the Recorder had to charge the \$2 per page fee because the Revised Code does not include an exception for providing documents on CD for a different price. (*Id.* at 25:24-26:4.) Judge Greene also determined that recorded documents are not "public records." (*Id.* at 76:25-77:6.) Judge Greene thus concluded that requiring relators to pay \$2 per page did not constitute a violation of the Public Records Act and was consistent with the public policy underlying the Recorder Statute.

Judge Greene's chief of staff confirmed that Judge Greene reached those conclusions based on her extensive legal research, testifying as follows:

Q. ... Have you developed any understanding as to what event or act or incident caused that practice of selling the CDs to stop during 2010, when did it stop?

A. When I became aware of what was going on, it did not seem – something seemed fishy, because – I don't recall a \$50 fee for discs anywhere in the statutes.

[O]nce it became clear that it began to endure legal issues, my boss, Judge Greene, handled all the research and all – anything to do with law, she would do days of research and come up with an opinion, whether or not she believed – she handled all the law. ...

[A]t that point, I turned it over to my boss, Lillian Greene, who began researching it. And she made – she had the ability to determine – and based on her 22 years on the bench ... she made an opinion that it was wrong.

(Kandah Dep. at 36:22-38:16.) The Recorder also retained outside counsel, who independently confirmed Judge Greene’s analysis and conclusion before relators filed this case. (Relator Evid. Vol. 1, Tab 2.) It therefore is clear that Judge Greene acted as a well-informed public official in a manner that she believed to be consistent with the public policy underlying the Recorder Statute.

The Court also should not award damages or fees because this is a case of first impression. As this Court has explained, “courts should not be in the practice of punishing parties for taking a rational stance on an unsettled legal issue.” *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 385, 2008-Ohio-6253, 899 N.E.2d 961 (quoting *State ex rel. Olander v. French* (1997), 79 Ohio St.3d 176, 179, 680 N.E.2d 962). Based on the undisputed evidence, Judge Greene acted as a well-informed public official when she concluded that the Recorder had to charge the \$2 per page fee for the copies relators requested, and her decision was consistent with the public policy of the Recorder Statute. Thus, even if the Court were to disagree with Judge Greene’s conclusion, it should not punish the Recorder for taking a rational stance on this case of first impression.

Finally, the court should not award statutory damages or attorneys' fees because relators do not identify any evidence in support of the amount of damages and fees they seek. Relators have the burden of proving the amount of fees they seek and that those fees are reasonable. *See Bittner v. Tri-County Toyota, Inc.* (1991), 58 Ohio St.3d 143, 145-46, 569 N.E.2d 464. Despite their burden, relators have not presented any evidence on those issues. The Court therefore should decline to award statutory damages or attorneys' fees in the event that it decides the question of first impression of whether the Recorder Statute or the Public Records Act governs the fee for copying recorded documents in favor of relators.

RESPONSE TO RELATORS' PROPOSITIONS OF LAW

A. Response to Relators' Proposition of Law Nos. 1-3

The Recorder does not dispute relators' first three "propositions of law." The Public Records Act identifies mandamus as an appropriate means for obtaining relief, and the procedures the Court follows in deciding an original action in mandamus are well-settled. Likewise, the general purpose and functioning of a county recorder is not in dispute.

B. Response to Relators' Proposition of Law No. 4

Relator's Proposition of Law No. 4 posits that recorded documents are "records" under R.C. 149.011(G) and therefore "public records" under R.C. 149.43. As set forth above, recorded documents are not "records" or "public records" because, while they are available to the public, they do not document a recorder's organization, functions, policies, decisions, procedures, operations, or other

activities. The Court therefore should reject relators' Proposition of Law No. 4 for the reasons set forth in detail, above.

C. Response to Relators' Proposition of Law No. 5

Under their Proposition of Law No. 5, relators claim that they are entitled to electronic copies of the "master CDs" under *State ex rel. Margolius v. City of Cleveland* (1992), 62 Ohio St.3d 456, 584 N.E.2d 665, and its progeny. The Court must reject that argument because relators did not request copies of the "master CDs" and because, even if they had, the "master CDs" are not "public records."

Relators asked for electronic copies of specific recorded documents, not the Recorder's database or backup copies. (Am. Compl. Ex. 1, Ex. 2.) Relators, however, ask the Court to treat their requests as being for copies of the Recorder's "master CDs." (Relator Br. 23-24, 33.) As support, they represent that their amended complaint seeks "a writ of mandamus to compel the Recorder to ... comply with the relators' requests for duplicates of the master CDs covering July and August, 2010." (*Id.* at 23.) There are two fatal problems with relators' position: they did not request copies of the "master CDs," and their amended complaint does not pray for a writ of mandamus compelling the Recorder to provide copies of the "master CDs."

Despite relators' myriad representations that their requests called for copies of the "master CDs," that is not correct. In relevant part, relators requested electronic copies of specific recorded documents as follows:

On behalf of [relator], I am writing to request, under the Ohio Open Records act, R.C. 149.43, electronic copies of all documents publicly recorded in the Recorder's Office in the months of July and August 2010. I understand that these documents are currently maintained by

your office in electronic form. [Relator] does not object to you not producing military discharges recorded during those two months.

Alternatively, if it would be less work for you to provide us with electronic copies of only the first 100 documents publicly recorded on each day of July and August 2010, we are willing to accept electronic copies of only those documents in lieu of electronic copies of every document publicly recorded in July and August, 2010.

Under R.C. 149.43(B)(6), please provide copies in electronic form on a compact disc (CD). Please produce the electronic copies in a format that does not modify the original document, and without any type of watermark image.

(Am. Compl. Ex. 1, Ex. 2.) These requests, made by both relators on the same day, are the only public records requests identified in their Amended Complaint, so they are the only request at issue in this case. (Am. Compl. ¶¶ 23-24 and Ex. 1, Ex. 2.)

Relators unambiguously asked for copies of specific recorded documents, not the “master CDs.” Indeed, relators’ requests do not mention the “master CDs” at all. They ask for “electronic copies of all documents publicly recorded in the Recorder’s Office in the months of July and August 2010.” (*Id.*) That relators offered to limit their request to exclude military discharges and to the first 100 documents recorded confirms that they did not request copies of the “master CDs” because the “master CDs” include electronic copies of *every* document recorded. Omitting military records and documents beyond the first one hundred recorded on a given day would require significant culling of the images on each “master CD,” not a straight duplication of those discs. Finally, relators would not have asked to have electronic images copied onto a compact disc if they actually wanted the Recorder to copy an already-existing CD onto another CD.

Because relators asked for electronic copies of individual recorded documents and not copies of the “master CDs,” they are not entitled to mandamus relief. See *Master*, 75 Ohio St.3d at 26-27; *Glasgow*, 119 Ohio St.3d 391 “[I]t is the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue.” *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 29. Here, relators’ requests are clear and unambiguous: they ask for copies of specific electronic documents, not copies of the “master CDs.” Therefore, the questions of whether relators have a clear legal right to copies of the “master CDs” and whether the Recorder has a clear legal duty to provide copies of the “master CDs” are not before the Court.

Even if relators had requested copies of the “master CDs” – which they did not – their claims still would fail under *Margolius*. According to relators, *Margolius* stands for the proposition that the act of “compiling information from public records creates a new and separate ‘public record.’” (Relator Br. 32.) That overstates the limited holding of *Margolius* and its relevance to this case. In *Margolius*, the Court held that a computer database may be, but is not necessarily, a public record if the manner in which the information is organized and stored “contains an added value that inherently is a part of the public record.” *Margolius*, 62 Ohio St.3d at 461.

The Court placed two significant limitations on its holding in *Margolius*.

~~First, the Court explained that computer files are necessarily public records:~~

We caution those who would interpret our decision as a wholesale opening of the computer files of our public agencies to any citizen who files a request. Indeed, it should be the rare instance in which a party

making such a request would be able to demonstrate a need for the record stored on a magnetic medium in lieu of a paper copy.

Margolius. 62 Ohio St.3d at 461. Second, the Court explained that storing information in digital form does not make the medium of storage a public record:

Finally, we wish to clarify that computer tapes qua computer tapes are not public records. To the contrary, a public record is simply a record kept in the course of business of a public institution. Expression in a tangible medium, be it on paper, magnetic tape, or magnetic disk, does not transform that medium into a public record, nor is it necessary that the expression be in a particular medium for it to be a public record. R.C. 149.43 requires the message, not the medium, to be disclosed. It is only when the method of expression enhances the message that we require agencies to disclose more than just a literal representation on paper.

Id. Both of these limitations would constrain the applicability of the Public Records Act in this case had relators actually asked for copies of the “master CDs.”

The “master CDs” do not have any “added value that inherently is a part of the public record” because they are nothing more than sequential collections of digital images. As relators admit, the “master CDs” are not copies of the Recorder’s main database, but rather “duplicates of the recorded deeds copied from the Recorder’s main data base.” (Relator Br. 33.) Those images are static pictures of the original documents that do not include the means needed to search or analyze the contents of the recorded documents. Accordingly, a “master CD” essentially is the digital equivalent of a box of paper photocopies, not a separate record that has inherent value independent of the recorded documents themselves. In that sense, a request for a copy of a “master CD” would be no different than relators’ actual request for electronic copies of the digital images (which are backed up on the

“master CDs” for disaster recovery purposes) since a “master CD” is not a database of the type at issue in *Margolius*.

Unlike in *Margolius*, where the relator could identify intrinsic value from manner in which the information at issue was organized, relators point only to their own economic interests – *i.e.*, that they could make a greater profit by obtaining electronic copies for less than \$2 per page. But that benefit would come at a dollar-for-dollar cost to taxpayers and the beneficiaries of the Ohio Housing Trust Fund. Moreover, relators admit that they would merely pass the \$2 page cost on to their customers. (Carsella Aff. ¶ 46; Stutzman Aff. ¶ 95.) Having to pass along a cost to a customer, especially where it is undisputed that the customer will pay, does not make this case one of the “rare instances” where an electronic copy is required under *Margolius*. It does, however, confirm that relators can still meet their customers’ needs if the Court denies their claims.

In contrast, good cause exists to deny relators’ request. Presently, relators can obtain electronic copies of any recorded document they seek for *free* using the Recorder’s website. But that is not good enough for relators because they think that would take too long and because the Recorder places a watermark on digital images accessed via its website. Neither of relators’ objections has merit.

By complaining about the time it takes to download images off of the Recorder’s website, relators admit the basic fact that they freely can obtain every document they seek in electronic form. That is precisely how countless others obtain electronic images of recorded documents, including researchers at Case Western

Reserve University's Center on Urban Poverty and Community Development who are investigating the causes and effects of the recent housing crisis. Michael Schramm, who is leading that research, testified:

Q. Have you ever used the County Recorder's website?

A. Yes.

Q. Are you aware that there's images available –

A. I mean, I use the images on the website if I need to use images, yes.

Q. How much do you pay for those images?

A. Nothing.

* * *

Q. Have you ever tried – when you've accessed the County Recorder's website, have you ever tried to download information from the web site, as opposed to just looking at it? Have you ever tried to download so you can save it?

A. Like saving the scanned image –

Q. Right.

A. – to your hard drive? Yes, I've done that.

(Schramm Dep. at 55:20-57:15.) As this shows, relators can obtain the images they seek *for free* the same as the general public. They just want the Recorder to perform the service of doing the work for them. But just as having to pay \$2 per page does not constitute good cause for mandamus, having to download electronic copies for ~~free does not constitute good cause for mandamus, either.~~

Relators' other objection, that the Recorder places a watermark on the electronic images on its website, also does not constitute good cause. While relators

do not explain or provide any basis for their objection, the Recorder has articulated two specific purposes for those watermarks: to prevent fraud and to ensure public access. As Judge Green testified, the watermarks serve both purposes:

Q. Did you approve the placement of a watermark image on the records recorded with the Recorder's office as they could be accessed via our web, the Recorder's web site?

A. Yes.

Q. Can you tell us why you approved that?

A. Because of fraud, because our website had been mined from afar, and it brought down our system, and because people present documents off of the website thinking they're originals or can be used for legal purposes.

Q. Explain the fraudulent –

A. Well, we were informed of people downloading deeds from the website and changing the names and bringing them in, filing, to take over – and took over people's property.

Q. Explain the remote.

A. Well, someone in a remote country, India, China, somewhere, they were downloading everything from our website, and it brought our website down to such that the public could not access it.

(Greene Dep. 40:5-25.) As this Court has explained, public offices must ensure that providing access “does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same.” *Hutson*, 70 Ohio St.3d at 623. That is precisely why the Recorder watermarks the electronic images on its website. Mandamus therefore is not warranted to compel the Recorder to provide non-watermarked electronic copies of recorded documents.

Finally, the “master CDs” are not “public records” because, as relators admit, the purpose of the “master CDs” is to serve “as fail-safes against losing recorded deeds stored in its main data base.” (Relator Br. 33.) The “master CDs” therefore are “security records” that are exempt from the Public Records Act under R.C. 149.433(B). *See* R.C. 149.433(A)(3)(a), (B). Moreover, the “master CDs” do not independently document the Recorder’s organization, functions, policies, decisions, procedures, operations, or other activities. They merely replicate the images in the Recorder’s database to ensure that no data is lost due to a system failure or interruption. Therefore, even if relators had requested copies of the “master CDs,” which they did not, their claims would still fail since the “master CDs” are not “public records,” and the Court should reject relators’ Proposition of Law No. 5.

D. Response to Relators’ Proposition of Law No. 6

Relators’ Proposition of Law No. 6 argues that the \$2 per page fee does not apply to electronic copies because “photocopying a document” is different from “copying” a document. Relators’ arguments fail under R.C. 9.01. As discussed above, use of any “electronic data processing” or “machine readable means” that provide “a medium of copying, recording or reproducing the original record, document, plat or instrument in writing” has “the same effect at law” as photocopying a document. R.C. 9.01. Thus, relators’ argument that the General Assembly did not define the general term “copy” is incorrect; that is exactly what the General Assembly did by enacting R.C. 9.01. That it also provided a separate facsimile fee does not change the analysis because that charge is for transmitting a document, not copying it, so it is no more relevant than the mailing charges under the Public Records Act. Finally,

relators' argument that copying a CD is different from photocopying has no relevance because relators' request did not ask the Recorder to copy the "master CDs." The Court therefore should reject relators' Proposition of Law No. 6.

E. Response to Relators' Proposition of Law No. 7

Continuing the error of their Proposition of Law No. 6, relators' Proposition of Law No. 7 relates to whether the Public Records Act controls the cost for obtaining a copy of a compact disc. But again, relators did not request copies of the "master CDs," they requested electronic copies of recorded documents. That distinction alone defeats relators' Proposition of Law No. 7.

Otherwise, no conflict exists between the Recorder Statute and the Public Records Act. By its terms, the Public Records Act yields when a specific statute independently governs the release of specific documents or information. See R.C. 149.43(a)(1)(v) ("public records" excludes "[r]ecords the release of which is prohibited by state or federal law"). See also *Slagle v. Rogers*, 103 Ohio St.3d at 90-92. That is consistent with the Court's holding in *Franklin County Sheriff's Department v. SERB*, on which relators rely, where the Court applied both the Public Records Act and a more specific statute to an agencies documents based on the various types of documents at issue. *SERB*, 63 Ohio St.3d at 501.

For county recorders, the Recorder Statute applies whenever a third party requests copies of recorded documents, regardless of whether those records are copied in paper or electronic form. R.C. 317.32(I), 9.01. The Public Records Act otherwise governs requests for copies of "records" that are generated by a county recorder in the course of discharging its statutory duties. By way of example, a

county recorder's personnel and finance records are subject to the Public Records Act the same as any other county department, as are its written policies and procedures and other undisputed categories of "public records." (Greene Dep. 79:25-82:13.) Therefore, the Court will give effect to both the Recorder Statute, the Public Records Act and R.C. 9.01 by holding that county recorders must charge the \$2 per page statutory fee for copying recorded documents regardless of the medium on which the copies are made and the "cost" of copying "records" that otherwise are subject to the Public Records Act.

Relators' other argument, that a number of counties in Ohio do not charge the \$2 per page fee for electronic copies, has no legal merit. As relators acknowledge, this is a case of first impression. (Relator Br. 25.) It therefore is neither remarkable nor surprising that different counties throughout Ohio have adopted varying practices. That does not mean relators are right as matter of law. It means this issue is ripe for resolution by the Court.

Nonetheless, relators suggest that a survey by a journalism professor shows that the Recorder is the lone outlier in charging the \$2 per page fee for electronic copies. Relators' survey proves no such thing. To be considered as evidence, relators' survey must be objectively verifiable or validly derived from widely accepted knowledge, facts or principles, its design must reliably implement the theory, and ~~the survey must be conducted in a way that will yield an accurate result.~~ Ohio R. Evid. 702(C); *State v. Conway*, 108 Ohio St.3d 214, 236-37, 2006-Ohio-791. Relators survey fails each of these requirements for at least the following reasons:

- Of Ohio's 87 other counties, relators' survey addresses only 61;
- The survey requested only a single day's worth of images, not two months' worth like relators requested in this case;
- There is no evidence of how many pages were produced by the county recorders who responded, which is needed to calculate the actual per-page rates charged;
- For the twenty six counties that indicated they could not provide digital images, relators survey "did not verify whether those statements were true," even though "those statements caused me to abandon my efforts to obtain a CD from those counties"; and
- The statements of various officials of the surveyed counties constitute inadmissible hearsay.

(Idsvoog Aff., Relator Evid., Vol. 2, Tab 6.) The survey therefore is not credible and does not prove any relevant fact, so it should not be considered as evidence in support of relators' claims.

But even if relators' survey was credible, it does not help to establish any relevant fact. Relators suggest that the Court should not allow the Recorder to charge the \$2 per page statutory fee because other county recorders in Ohio do not. But the fact that many do not follow a law does not mean the law does not exist; it means the law is not being enforced. Highway speed limits illustrate relators' error. Over any period of time, many drivers will exceed the speed limit by at least a few miles per hour. That does not mean the speed limit does not exist or that a court must acquit a motorist charged with speeding. Similarly, that other recorders do not charge \$2 per page for electronic copies is not evidence of whether they should.

While relators' survey does not establish what the law is or should be, it does show that only some of Ohio's counties recorders have invested the resources

necessary to acquire and implement modern document management and reproduction technology. If the Court adopts relators' position, the county recorders who have made the investment to bring their offices into the digital age will be punished by losing a significant source of the funding needed to sustain their modernization efforts. At the same time, counties that have not made such an investment will be rewarded for using antiquated technology and they will be less likely to change anytime soon. Such unintended consequences would be contrary to the General Assembly's intent as expressed in R.C. 9.01.

Ultimately, that other counties may not or cannot provide electronic copies, or that the counties that can may or may not charge the fee imposed by the General Assembly when making electronic copies, does not dictate what is right or what Cuyahoga County must do. That is the purpose of R.C. 9.01 and 317.32(I), irrespective of what other counties are or have been doing. Therefore, because relators did not request copies of the "master CDs" and because the "master CDs" are not otherwise subject to production under the Public Records Act, relators' Proposition of Law No. 7 is not well taken and should be rejected by the Court.

F. Response to Relators' Proposition of Law No. 8

Relators' final "proposition" is less a proposition of law than it is a concluding statement of its argument. Relators object that \$2 per page is an excessive charge for electronic copies because it is not a fair representation of the value of the information printed on each page and because the concept of a digital "page" is outmoded. But whether or not relators believe that \$2 per page is fair is of no moment. Likewise, that the amount of information on a "page" can vary, that the

Recorder makes “master CDs” for disaster recovery purposes, and that the price for copies of large plat maps is calculated by the square inch does not change the analysis. The law as enacted by the General Assembly requires county recorders to charge \$2 per page for copying recorded documents, and that amount is reasonable in view of the facts of this case. The Court therefore should deny relators claims and hold as a matter of law that the \$2 per page statutory fee under R.C. 317.32(I) applies regardless of the medium or technology used to copy a recorded document.

RESPONSE TO AMICI CURIAE

A. The Reporter’s Committee for Freedom of the Press and The Ohio Newspaper Association

The arguments by *amici* The Reporter’s Committee for Freedom of the Press and The Ohio Newspaper Association do not change the analysis or the conclusion. Neither group, both of which represent various members of the press, argues that enforcement of R.C. 317.32(I) would act as a prior restraint on their members’ First Amendment rights. Their arguments therefore do not identify any overriding Constitutional basis for the Court to not enforce R.C. 9.01 and 317.32(I) as written.

The Reporters Committee’s first proposition relies on several Ohio Attorney General opinions to argue by analogy that the \$2 per page fee should not apply to electronic copies. None of the cited opinions overrules or supersedes Ohio Attorney General Bricker’s 1933 opinion, as none addresses the dispositive issue in this case: whether R.C. 9.01 applies so that making electronic copies constitutes “photocopying” for purposes of R.C. 317.32(I). The Reporters Committee’s first proposition therefore should be rejected for the same reasons as relators’

propositions. The Reporters Committee's second proposition, that application of R.C. 317.32(I) to electronic copies would threaten the ability of the press to report the news, fares no better since there is no evidence that any of the reporting it cites would have been affected in any way by the \$2 per page statutory fee.

There is no evidence in the record that the reporting of *any* of the cited news stories depended on having access to images of recorded documents. For example, the analysis of 1.2 million Cuyahoga County property transfers referenced in footnote 8 of The Reporters Committee's brief was done using a database created by Cleveland State University, not electronic images obtained from the Recorder. See Bob Paynter, *How the Data was Analyzed*, THE PLAIN DEALER (CLEVELAND), August 27, 2000, at 15A, available at 2000 WLNR 9035381 (Apx. 37). That database included "the address, the buyer and seller, the amount paid and the date of sale, among other things, for all property transfers," but not images of recorded documents. *Id.* But even if it did, that would not matter because those images remain available for *free* on the Recorder's website and using its public access terminals. The same is true for the other cited stories, as each would have been possible since reporters can access every recorded document for free regardless to the press and the general public. Therefore, reporting of the type identified by The Reporters Committee can continue no matter how this Court rules.

The arguments by the Ohio Newspaper Association likewise show that denial of relators' claims will not affect the ability of the press to report the news. The Ohio Newspaper Association suggests that R.C. 317.32(I) and 9.01 should not be given

effect because journalists sometimes use databases to conduct investigative reporting. While that may be true, that is not at issue in this case. As discussed above, relators have not requested copies of the Recorder's database. They have requested electronic copies of specific recorded documents. That distinction controls regardless of whether relators' requests are recast as calling for copies of the "master CDs" since those discs include only digital images of recorded documents that do not permit textual searching of the information those imaged depict. The Ohio Newspaper Association's arguments therefore are not germane to this case.

No matter how the Court decides this case, news organizations – just like every other member of the general public – will be able to search, view and print recorded documents *for free* using the Recorder's website, search and view every recorded document *for free* using the Recorder's public access terminals, and print copies of every recorded document for 5¢ per page using the Recorder's public printers. The Reporter's Committee and The Ohio Newspaper Association therefore have not identified any good reason for the Court to not enforce R.C. 317.32(I) and 9.01 as enacted and hold that county recorders may charge the \$2 per page fee for electronically copying recorded documents.

B. The Ohio Land Title Association

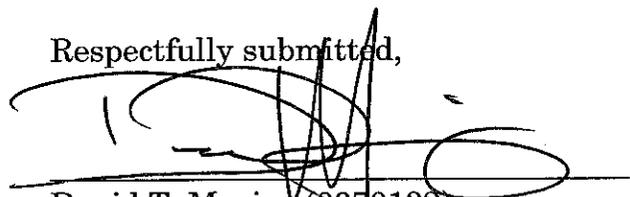
The brief of *amici* Ohio Land Title Association also does not identify any reason for the Court to change its analysis or conclusion. Beyond providing a background on the history of land title recording, the Ohio Land Title Association makes just one substantive argument: that enforcement of the \$2 per page fee could increase the transaction costs for certain real estate transactions. It does not,

however, provide any evidence to support that speculation. Moreover, relators admit that they could pass on any increased costs to their customers. To the extent the Ohio Land Title Association is concerned about the potential expense that its member companies or their customers would bear as a result of enforcement of R.C. 317.32(I) and 9.01 as enacted, it must seek relief through the General Assembly, not this Court. The Ohio Land Title Association therefore has not identified any proper reason for the Court to not apply the Recorder Statute and R.C. 9.01 as enacted to conclude that county recorders may charge the \$2 per page fee for making electronic copies of recorded documents.

CONCLUSION

For the foregoing reasons, relators have failed to establish entitlement to any mandamus relief. The Court therefore should deny each of relators' claims and enter judgment in favor of the Cuyahoga County Recorder.

Respectfully submitted,



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Counsel for Cuyahoga County Recorder

CERTIFICATE OF SERVICE

In accordance with Rule 14.2 of the Rules of Practice of the Supreme Court of Ohio, I hereby certify that on July 25, 2011, I served a copy of the foregoing ***Merits Brief of Respondent Cuyahoga County Recorder*** by messenger upon the following counsel for relators:

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Counsel for
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One of the Attorneys for
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ACTS
OF THE
STATE OF OHIO

FIRST SESSION

OF

The General Assembly, held under the Constitution of the State, A. D., One Thousand Eight Hundred and Three, and of the Independence of the United States the twenty-seventh.

ALSO

AN APPENDIX

CONTAINING

39719

CERTAIN RESOLUTIONS

VOL. I

PUBLISHED BY AUTHORITY

CHILLICOTHE
PRINTED BY N. WILLIS, PRINTER TO THE STATE
1803

NORWALK, OHIO
REPRINTED BY THE LANING COMPANY
1901

CHAPTER XXXIV.

An act providing for the recording of deeds, mortgages and other conveyances of land.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That there shall be one recorder in each county, who shall be appointed by the associate judges of the proper county, in the manner following, to-wit: After the said associates shall have received their commissions and have taken the oaths of allegiance and of office, agreeable to law, the associate judge eldest in commission, shall give notice in writing to the other two associates, notifying them of the time of meeting at the seat of justice, for the time being, and at the same time they appoint clerks *pro tempore* (at least six days previous to the time of such meeting) for the purpose of selecting a fit person for recorder of the county; and the said associate judges or any two of them, when so met, shall proceed to appoint a person (having the qualifications of an elector) recorder of the county, for the term of seven years, if he so long behaves himself well, who shall give bond with two good sureties, to be approved of by the said judges, in the sum of one thousand dollars, to the governor of this state and his successors in office, conditioned for the faithful discharge of the duties

Are recorder
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judges.

For seven
years.

To give
bond with
good se-
curities.

NOTE—This error of paging appears in all Vols. 1.

Oath.

of his office, who shall then take and subscribe the following oath: "I, A B, do solemnly swear, or affirm (as the case may be) that I will faithfully and impartially discharge the duties of recorder for the county of — according to the best of my abilities and understanding.

Procure books, record deeds, etc.

Sec. 2. *And be it further enacted,* That the said recorders in the several counties in this state, shall record in a fair and legible hand, in a book or books to be by him provided for that purpose, all deeds, mortgages and conveyances of lands and tenements, lying within his county, and also all other instruments and writings which by law are required to be recorded.

Endorse the time of receiving deeds, etc., for record.

Sec. 3. *And be it further enacted,* That the said recorder shall, upon receipt of any deed or other writing, which shall be delivered to him to be recorded as aforesaid, endorse thereon the time when the same was entered for record, and shall also (if thereunto requested) give to the person delivering the same a receipt therefor, expressing the date thereof, the name of the parties, and a description of the premises, without any fee or reward. And said recorder shall record all deeds and other writings in regular succession, according to their priority or time of being brought into his office, and when the same shall be recorded he shall endorse thereon,

When requested give receipt.

Endorse time of recording, etc.

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the time when, the number and page of the book in which the same is recorded.

Sec. 4. *And be it further enacted,* That it shall be the duty of said recorder to make out for any person demanding the same, a fair and accurate copy of any record in his office, to which copy he shall affix his certificate and signature.

Make out
copies of
record
when re-
quired.

Sec. 5. *And be it further enacted,* That for the recording of any deed or other writing, the said recorder shall be entitled to demand and receive, of the person or persons for whom the same shall be recorded, the sum of nine cents for every hundred words therein contained; and for all copies of records the said recorder shall be entitled to demand and receive, of the person or persons requiring the same, the sum of nine cents for each hundred words contained therein.

Compensa-
tion.

Sec. 6. *And be it further enacted,* That if any recorder shall neglect or refuse to receive and record any deed or other writing, which shall be presented to him for that purpose, or shall refuse to give a receipt therefor, if required, or shall refuse to make out and certify a copy of any record that shall be demanded of him, or shall demand and receive of any person or persons, for any of the afore-said services, greater fees than is herein allowed, or shall fraudulently endorse on any deed or writing, a different date than the day

on which said deed or writing was entered for record, or a different date from that date on which the same was recorded, with intent to defraud any person or persons, he shall for every such offense, forfeit and pay a sum not exceeding two hundred dollars, to the collector of the county where the offense shall be committed, to be recovered by indictment, and shall also pay to the party aggrieved, all damages which he, she or they shall have sustained thereby, with costs of suit.

Penalty.

Recorders to deliver over books, etc.

To give receipt.

Repealing clause.

Sec. 7. *And be it further enacted,* That the recorders of the different counties within this state, are hereby directed and required to deliver up all the books, records and other instruments in their respective offices, to the recorders of the respective counties, immediately after this act takes effect, and the said recorders are hereby required to give their receipt to the said recorders for the said books and papers so delivered, which shall be a full discharge to such recorder, as to the specifications therein mentioned.

Sec. 8. *And be it further enacted,* That all laws and parts of laws, within the purview of this act, be, and the same are hereby repealed.

This act to take effect and be in force, from and after the first day of October next.

MICHAEL BALDWIN,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

April 16th, 1803.

CHAPTER XXXV.

An act appropriating moneys for the payment of debts due from the state of Ohio, and for making appropriations for the year one thousand eight hundred and three.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio, That ten thousand nine hundred and fifty dollars, shall be appropriated for contingent expenses, and that all moneys which shall be received into the state treasury, except as above appropriated, for contingent expenses, shall be a general fund for the payment of all moneys allowed by law, which shall not be directed to be paid out of the contingent fund.*

Contingent fund.

Sec. 2. *And be it further enacted, That there may be paid out of the contingent fund, the sums following, viz:*

Payment of it.

To the secretary of state, for distributing

red for late on sent to all for not ex- e col- offense by in- rty ag- r they sts of

That within ired to other to the nmedi- e said their books a full scifica-

That : pur- hereby force,

★

THROCKMORTON'S OHIO CODE

ANNOTATED

BALDWIN'S

1936

Certified Revision

Complete to May 1, 1936

WILLIAM EDWARD BALDWIN, D.C.L.

Editor-in-Chief

*Editor, Officially Certified Code of Ohio, 1930, 1934; Baldwin's Indiana Statutes, 1934; Official
Statutes of Kentucky; Official Codes of Practice of Kentucky; Tennessee Code Supplement;
Michigan Compiled Laws, Supplement; Bowler's Law Dictionary, Baldwin's Revision.*



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CLEVELAND



the words "The Tax Commission of Ohio" and such other design as the commission may prescribe engraved thereon, by which it shall authenticate its proceedings and of which the courts shall take judicial notice. (102 v. 225, § 8.)

 *Seals, 1 et seq.*

§ 31-2. Seal ["The public service commission of Ohio."]
 The commission shall have an official seal which shall be one inch and three-quarters in diameter, with such design as the commission may prescribe engraved thereon, and surrounded by the words "The Public Service Commission of Ohio," with which its proceedings shall be authenticated and of which the courts shall take judicial notice. (102 v. 573, § 79.)

 *Seals, 1 et seq.*

Seal of public utilities commission. G.O. § 499-2.
 The public service commission has been succeeded by the public utilities commission. G.O. § 499-2.

§ 32. Seal; of what it may consist.—Where an official or a corporate seal is required to be affixed to an instrument of writing, an impression of such seal upon either wax, wafer or other adhesive substance, or upon the paper or material on which such instrument is written, shall be alike valid and sufficient. Private seals are abolished, and the affixing of what has been known as a private seal to an instrument shall not give such instrument additional force or effect, or change the construction thereof. (R. S. § 4.)

 *Seals, 1 et seq.*

See Deibel's Probate Law, § 19.
 Corporation seal, adoption of. G.O. § 8623-3.
 What appearance of a seal will be considered a seal. *Highway v Pendleton*, 15 O. 735.
 The word "seal" printed in the form after signature is a "scrawl seal" and under statute has same effect as a common law seal. *Osborn v Kistler*, 35 O.S. 99.
 Undertaking in attachment provided by G.O. § 11821 not a specialty and is valid although seal is omitted. *McLain v Simington*, 37 O.S. 484.
 Two or more signers may adopt one seal. Official bonds held not an exception to this rule. *Building Assn. v Cummings*, 45 O.S. 564, 16 N.E. 541.
 Seal of a corporation affixed to a private instrument is

not a seal. *P. C. C. & St. L. Ry. v Lynde*, 55 O.S. 23, 19, 44 N.E. 596.

Since passage of this section bill of exceptions in criminal case need not be sealed. *Venable v State*, 1 O.O. 301, 1 O.D. 165.

Deed of conveyance by corporation prior to passage of this act had to be under seal, by force of this section held not necessary now. *East End Bldg. & Loan Co. v Hugby*, 16 O.O. 19, 8 O.D. 724.

Any mark or blot intended for the seal of a corporation is sufficient. *Bobe v Building Assn.*, 8 D. Repr. 184, 8 B. 124.

Any character or mark intended as a seal to an instrument requiring a seal is sufficient. *Bobe v Building Assn.*, 8 D. Repr. 1832, 9 Am. L. Rec. 592.

§ 32-1. Photographic or photostatic process may be used in recording legal paper.—

Whenever any officer, office, court, commission, board, institution, department, agent, or employe of the state, or of any county of more than 50,000 population, according to the next preceding federal census, is required or authorized by law, or has the duty to record or copy any document, plat, paper, or instrument of writing, such recording or copying, may be done by any photostatic or photographic process which clearly and accurately copies, photographs, or reproduces the original document, plat, paper or instrument of writing. (113 v. 773. Eff. July 30, 1929.)

 *Records, 2 et seq.*

Procedure when no space for assignments. G.O. § 8548-1.
 A board of county commissioners has no authority to purchase a process by which a miniature photographic reproduction of county records may be made for the purpose of preserving the same. 1931 O.A.G. No. 3725.

The county commissioners may stipulate, upon the purchase of a photostatic machine, that it be available for the use of other county officers when not required by the office in which it is to be located. 1931 O.A.G. No. 3027.

County commissioners have no authority to create a separate department of county government and appoint the necessary employes to operate a photostatic machine and compel other county officials to make use of the facilities thus provided. The commissioners may, however, if its use is necessary in connection with the work of their office purchase such a machine, make it available for use by other county offices, and may, in the exercise of a reasonable discretion, refuse to purchase such a machine for any other office. 1931 O.A.G. No. 3027.

The photostatic or photographic process, authorized by G.O. § 32-1, is included within the term "printing" as used in § 2778, and therefore a county recorder using such process for recording instruments, may collect the fees specified in that section. 1933 O.A.G. No. 167.

recorded, such original or exemplification or a certified copy of the former record, may be recorded in the proper office therefor. In re-recording it, the officer shall record the certificate of the previous record with date of filing for record appearing on the original or certified certificate so recorded, which shall be taken and held as the date of the recording of the instrument to which it is attached. Copies of records herein authorized to be made, duly certified, shall have the same force and effect as evidence as certified copies of the original record. (R. S. § 907.)

Records, 9 et seq.

Destruction of unrecorded deed will not revest title. *Jeffers v Philo*, 35 O.S. 173.

§ 2776. Making and comparison of record.—When any such instrument or record is presented to the county recorder or other proper custodian of such records, he shall forthwith record and index it in accordance with the law for the original recording. A competent person shall compare such record with the instrument so recorded, and, if correctly recorded, certify on the margin of the page upon which such record has been made the correctness thereof. (R. S. § 907.)

Registers of Deeds, 3 et seq.

§ 2777. Fees, how paid.—Such recording officer shall receive compensation for recording such map or plat not exceeding six lines, fifty cents, and for each additional line, two cents, and for any such recording and indexing other than a map or plat, at a rate of not more than five cents for each hundred words. Such compensation shall be paid from the county treasury upon the allowance of the county commissioners.

No bill for services under this section shall be allowed by the county commissioners until they are first duly satisfied that such services have been rendered and the charges therefor are not in excess of the rates herein provided. (R. S. § 907.)

Registers of Deeds, 2.

§ 2778. Fees for recording deeds and mortgages; certified copy.—For the services herein-after specified, the recorder shall charge and collect the fees provided in this and the next following section. For recording mortgage, deed of conveyance, power of attorney or other instrument of writing, twelve cents for each hundred words actually written, typewritten or printed on the records and for indexing it, five cents for each grantor and each grantee therein; for certifying copy from the record, twelve cents for each hundred words. 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. (102 v. 290; R. S. § 1157.)

Registers of Deeds, 2.

See G.O. § 267 and note citing 1927 O.A.G. No. 1215.
 See G.O. § 32-1 and note citing 1933 O.A.G. No. 167.
 See G.O. § 2753 and note citing 1933 O.A.G. No. 805.
 See § 2779 and note citing 1934 O.A.G. No. 2705.
 Compensation of county recorders in certain counties, see the acts relating to the compensation of county auditors in such counties, referred to under G.O. § 2624.
 County auditors are entitled to receive the same compensation for indexing as is allowed for such services in other cases. *State v Godfrey*, 4 C.O.(N.S.) 465, 14 C.D. 465.
 Where the owner of a number of oil and gas leases assigns his interest therein to another in one instrument, such instrument is included in the term "other instrument of writing" within G.O. § 2778, and the recorder should charge twelve cents for each hundred words actually written for recording, and five cents for each grantor and each grantee therein for indexing said instrument. 1930 O.A.G. No. 1668.
 A county recorder has no authority to make a charge

for making a marginal reference to an assignment and original record of a lease. 1930 O.A.G. No. 2068.
 A county recorder may not require the prosecuting attorney or his assistant to pay the fees set forth in § 2778 at the time of application for certified copies of deeds and mortgages recorded in the recorder's office, when such copies are to be used as evidence by the state in the trial of a criminal case in such county. 1936 O.A.G. No. 5136.

§ 2779. Fees continued.—For recording assignment or satisfaction of mortgage or discharge of a soldier, twenty-five cents; for each search of the record, without copy, fifteen cents; for recording any plat not exceeding six lines, one dollar, and for each additional line, ten cents. (R. S. § 1157.)

Registers of Deeds, 2.

See G.O. § 8572 and note citing 1933 O.A.G. No. 431.
 Where a deed contains a map or plat of the territory being deeded, and such deed and map or plat are being recorded by photostatic or photographic process, it is the duty of the county recorder to charge a fee of twelve cents for each hundred words photographed or photostated on the records, and in addition thereto the fee prescribed in § 2779, for recording a plat or map by the photostatic or photographic process. 1934 O.A.G. No. 2705.

§ 2780. Fees for transcribing records.—For services directed to be performed by the county commissioners in transcribing the records of other counties, and for transcribing defaced or injured records, the recorder shall receive not exceeding six cents for each hundred words, each figure to count as one word for transcribing defaced or injured records of plats, not exceeding fifty cents for the first six lines and three cents for each additional line. For the purpose of this chapter a line shall be such portion of the record as may be drawn by a continuous stroke of the pen, regardless of intersecting lines; for keeping up indexes as provided in section twenty-seven hundred and sixty-seven, ten cents for the entry of each tract or lot of land. All compensation provided for in this section shall be paid out of the county treasury upon the allowance of the county commissioners and the warrant of the county auditor and shall be paid into the county treasury to the credit of the recorder's fee fund. The county commissioners shall allow the recorder his necessary expenses in transcribing records in other counties. (102 v. 290; R. S. § 1158.)

Registers of Deeds, 2.

See G.O. § 2977 and note citing *State v Kennedy*.
 If a claim created by statute against a county be allowed in whole or in part, the remedy of claimant is appeal to the court of common pleas, from the action of the commissioners. *Shepard v Comm'rs*, 8 O.S. 354.

§ 2781. For what he may be sued on his bond.—If a county recorder refuses to receive a deed or other instrument of writing presented to him for record, the legal fee for recording it being paid or tendered; or refuses to give a receipt therefor, when required; or fails to number consecutively all deeds or other instruments of writing upon receipt thereof; or fails to index a deed or other instrument of writing, by the morning of the day next after it is filed for record, or neglects, without good excuse, to record a deed or other instrument of writing within twenty days after it is received for record; or demands a greater fee for his services than is allowed by law; or knowingly indorses on a deed or other instrument of writing a different date from that on which it was presented for record; or a different date from that on which it was recorded; or refuses to make out and certify a copy of any record in his office, when demanded; or legal fee therefor being paid or tendered; or purposely destroys, defaces, or injures any book, record, or seal belonging to his office, or any deed or other instrument of writing deposited therefor;

R.C. 9.01 Reproduction of records

When any officer, office, court, commission, board, institution, department, agent, or employee of the state, of a county, or of any other political subdivision who is charged with the duty or authorized or required by law to record, preserve, keep, maintain, or file any record, document, plat, court file, paper, or instrument in writing, or to make or furnish copies of any of them, deems it necessary or advisable, when recording or making a copy or reproduction of any of them or of any such record, for the purpose of recording or copying, preserving, and protecting them, reducing space required for storage, or any similar purpose, to do so by means of any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process, or perforated tape, magnetic tape, other magnetic means, electronic data processing, machine readable means, or graphic or video display, or any combination of those processes, means, or displays, which correctly and accurately copies, records, or reproduces, or provides a medium of copying, recording, or reproducing, the original record, document, plat, court file, paper, or instrument in writing, such use of any of those processes, means, or displays for any such purpose is hereby authorized. Any such records, copies, or reproductions may be made in duplicate, and the duplicates shall be stored in different buildings. The film or paper used for a process shall comply with the minimum standards of quality approved for permanent photographic records by the national bureau of standards. All such records, copies, or reproductions shall carry a certificate of authenticity and completeness, on a form specified by the director of administrative services through the state records program.

Any such officer, office, court, commission, board, institution, department, agent, or employee of the state, of a county, or of any other political subdivision may purchase or rent required equipment for any such photographic process and may enter into contracts with private concerns or other governmental agencies for the development of film and the making of reproductions of film as a part of any such photographic process. When so recorded, or copied or reproduced to reduce space required for storage or filing of such records, such photographs, microphotographs, microfilms, perforated tape, magnetic tape, other magnetic means, electronic data processing, machine readable means, graphic or video display, or combination of these processes, means, or displays, or films, or prints made therefrom, when properly identified by the officer by whom or under whose supervision they were made, or who has their custody, have the same effect at law as the original record or of a record made by any other legally authorized means, and may be offered in like manner and shall be received in evidence in any court where the original record, or record made by other legally authorized means, could have been so introduced and received. Certified or authenticated copies or prints of such photographs, microphotographs, films, microfilms, perforated tape, magnetic tape, other magnetic means, electronic data processing, machine readable means, graphic or video display, or combination of these processes, means, or displays, shall be admitted in evidence equally with the original.

Such photographs, microphotographs, microfilms, or films shall be placed and kept in conveniently accessible, fireproof, and insulated files, cabinets, or containers, and provisions shall be made for preserving, safekeeping, using, examining, exhibiting, projecting, and enlarging them whenever requested, during office hours.

All persons utilizing the methods described in this section for keeping records and information shall keep and make readily available to the public the machines and equipment necessary to reproduce the records and information in a readable form.

R.C. 149.433 Definitions

(A) As used in this section:

- (1) "Act of terrorism" has the same meaning as in section 2909.21 of the Revised Code.
- (2) "Infrastructure record" means any record that discloses the configuration of a public office's or chartered nonpublic school's critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of the building in which a public office or chartered nonpublic school is located. "Infrastructure record" does not mean a simple floor plan that discloses only the spatial relationship of components of a public office or chartered nonpublic school or the building in which a public office or chartered nonpublic school is located.
- (3) "Security record" means any of the following:
 - (a) Any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage;
 - (b) Any record assembled, prepared, or maintained by a public office or public body to prevent, mitigate, or respond to acts of terrorism, including any of the following:
 - (i) Those portions of records containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel;
 - (ii) Specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies;
 - (iii) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies, and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism.
 - (c) A school safety plan adopted pursuant to section 3313.536 of the Revised Code.

(B) A record kept by a public office that is a security record or an infrastructure record is not a public record under section 149.43 of the Revised Code and is not subject to mandatory release or disclosure under that section.

(C) Notwithstanding any other section of the Revised Code, disclosure by a public office, public employee, chartered nonpublic school, or chartered nonpublic school employee of a security record or infrastructure record that is necessary for construction, renovation, or remodeling work on any public building or project or chartered nonpublic school does not constitute public disclosure for purposes of waiving division (B) of this section and does not result in that record becoming a public record for purposes of section 149.43 of the Revised Code.

R.C. 317.13 Recording of data

(A) Except as otherwise provided in division (B) of this section, the county recorder shall record in the proper record, in legible handwriting, typewriting, or printing, or by any authorized photographic or electronic process, all deeds, mortgages, plats, or other 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. The recorder shall record the instruments in regular succession, according to the priority of presentation, and shall enter the file number at the beginning of the record. On the record of each instrument, the recorder shall record the date and precise time the instrument was presented for record. All records made, prior to July 28, 1949, by means authorized by this section or by section 9.01 of the Revised Code shall be deemed properly made.

(B) The county recorder may refuse to record an instrument of writing presented to the recorder for recording if the instrument is not required or authorized by the Revised Code to be recorded or the recorder has reasonable cause to believe the instrument is materially false or fraudulent. This division does not create a duty upon a recorder to inspect, evaluate, or investigate an instrument of writing that is presented for recording.

(C) If a person presents an instrument of writing to the county recorder for recording and the recorder, pursuant to division (B) of this section, refuses to record the instrument, the person may commence an action in or apply for an order from the court of common pleas in the county that the recorder serves to require the recorder to record the instrument. If the court determines that the instrument is required or authorized by the Revised Code to be recorded and is not materially false or fraudulent, it shall order the recorder to record the instrument.

R.C. 317.19 Daily register of deeds and mortgages

The county recorder shall keep a daily register of deeds and a daily register of mortgages, in which he shall note, as soon as filed, in alphabetical order according to the names of the grantors, respectively, all deeds and mortgages affecting real estate, filed in his office. He shall keep such register in his office, and it shall be open to the inspection of the public during business hours. The recorder may destroy such daily register after the expiration of a period of ten years from the date of the last entry in such register.

**R.C. 317.20 Sectional indexes;
deletion of references to restrictive covenants**

(A) When, in the opinion of the board of county commissioners, sectional indexes are needed and it so directs, in addition to the alphabetical indexes provided for in section 317.18 of the Revised Code, the board may provide for making, in books prepared for that purpose, sectional indexes to the records of all real estate in the county beginning with some designated year and continuing through the period of years that the board specifies. The sectional indexes shall place under the heads of the original surveyed sections or surveys, parts of a section or survey, squares, subdivisions, permanent parcel numbers provided for under section 319.28 of the Revised Code, or lots, on the left-hand page or on the upper portion of that page of the index book, the name of the grantor, then the name of the grantee, then the number and page of the record in which the instrument is found recorded, then the character of the instrument, and then a pertinent description of the interest in property conveyed by the deed, lease, or assignment of lease and shall place under similar headings on the right-hand page or on the lower portion of that page of the index book, beginning at the bottom, all the mortgages, liens, notices provided for in sections 5301.51, 5301.52, and 5301.56 of the Revised Code, or other encumbrances affecting the real estate.

(B) The compensation for the services rendered under this section shall be paid from the general revenue fund of the county, and no additional levy shall be made in consequence of the services.

(C) If the board of county commissioners decides to have sectional indexes made, it shall advertise for three consecutive weeks in one newspaper of general circulation in the county for sealed proposals to do the work provided for in this section, shall contract with the lowest and best bidder, and shall require the successful bidder to give a bond for the faithful performance of the contract in the sum that the board fixes. The work shall be done to the acceptance of the auditor of state upon allowance by the board. The board may reject any and all bids for the work, provided that no more than five cents shall be paid for each entry of each tract or lot of land.

(D) When the sectional indexes are brought up and completed, the county recorder shall maintain the indexes and comply with division (E) of this section in connection with registered land.

(E)

(1) As used in division (E) of this section, "housing accommodations" and "restrictive covenant" have the same meanings as in section 4112.01 of the Revised Code.

- (2) In connection with any transfer of registered land that occurs on and after the effective date of this amendment in accordance with Chapters 5309. and 5310. of the Revised Code, the county recorder shall delete from the sectional indexes maintained under this section all references to any restrictive covenant that appears to apply to the transferred registered land, if any inclusion of the restrictive covenant in a transfer, rental, or lease of housing accommodations, any honoring or exercising of the restrictive covenant, or any attempt to honor or exercise the restrictive covenant constitutes an unlawful discriminatory practice under division (H)(9) of section 4112.02 of the Revised Code.

R.C. 317.201 Notice index for preservation of claims

The county recorder shall maintain a book to be known as the "Notice Index." Separate pages of the book shall be headed by the original survey sections or surveys, or parts of a section or survey, squares, subdivisions, or the permanent parcel numbers provided for under section 319.28 of the Revised Code, or lots. In this book, there shall be entered the notices for preservation of claims presented for recording in conformity with sections 5301.51, 5301.52, and 5301.56 of the Revised Code. In designated columns, there shall be entered on the left-hand page:

- (A) The name of each claimant;
- (B) Next to the right, the name of each owner of title;
- (C) The deed book number and page where the instrument containing the claim has been recorded;
- (D) The type of claim asserted.

On the opposite page on the corresponding line, a pertinent description of the property affected as appears in such notice shall be entered.

**R.C. 317.21 Plats, records, and documents
for use of county and municipal authorities**

Whenever the county recorder, county auditor, and county treasurer, or a majority of them, determines to provide, for the convenience of the various county officials and the more efficient performance of their duties, including those prescribed by sections 5309.01 to 5309.98 and 5310.01 to 5310.21, inclusive, of the Revised Code, plats, records, abstracts, books, copies of records, abstracts of records, existing or destroyed by fire or otherwise, or other documents or instruments affecting the title of any lands, tenements, or hereditaments within the county, they may acquire the same by purchase, lease, or rental. When acquired, such property shall be kept up and maintained in the office of the recorder or auditor, as such officials determine, and shall be at all times subject to the use, examination, and inspection of the public, and all officials of the county and the municipal corporations therein.

R.C. 317.27 Certified copy of record

On demand and tender of the proper fees, the county recorder shall furnish to any person an accurate, certified copy of any record in the recorder's office other than a record of discharge under section 317.24 of the Revised Code, and affix the recorder's official seal thereto. The recorder shall issue, without charge, upon the request of an authorized party, as defined in section 317.24 of the Revised Code or a person other than an authorized party as defined in that section, one certified copy or one certified photostatic copy of the recorded record of discharge under that section, with the official seal of the county recorder affixed thereto.

Any certified copy of any record, document, or map and any transcription of records, required or permitted to be made by the recorder, may be made by any method provided for the making of records.



OPINIONS

OF THE

Attorney General

OF

OHIO

FOR THE

Period from January 9, 1933,
to January 9, 1934.

#91874

VOLUME I.



Cleveland, Ohio
The Consolidated Press & Printing Co.
State Printers
1933
Bound at the State Bindery



sureties by the director (of highways), and as to legality and form by the attorney general, and be deposited with the secretary of state. * * *
(Words in parenthesis the writer's.)

The second listed bond is undoubtedly executed pursuant to the provisions of sections 1183 and 1182-3, General Code. Section 1183, General Code, provides in part:

"* * * Such resident district deputy directors shall * * * give bond in the sum of five thousand dollars. * * *"

Section 1182-3, General Code, has been quoted above.

Finding said bonds to have been properly executed in accordance with the above statutory provisions, I am hereby approving them as to form, and returning them to you herewith.

Respectfully,
JOHN W. BRICKER,
Attorney General.

166.

APPROVAL, BONDS OF JACKSON TOWNSHIP RURAL SCHOOL DISTRICT, SANDUSKY COUNTY, OHIO—\$5,000.00.

COLUMBUS, OHIO, February 24, 1933.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

167.

RECORDING—USE OF PHOTOSTATIC OR PHOTOGRAPHIC PROCESS
AUTHORIZED—COUNTY RECORDER MAY CHARGE STATUTORY
FEE FOR SUCH RECORDING.

SYLLABUS:

The photostatic or photographic process, authorized by section 32-1 of the General Code, is included within the term "printing" as used in section 2778, and therefore a county recorder using such process for recording instruments, may collect the fees specified in that section.

COLUMBUS, OHIO, February 24, 1933.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I have your letter of recent date which reads as follows:

"You are respectfully requested to furnish this department with your written opinion upon the following:

Section 32-1 of the General Code provides for the recording of any document, plat, paper or instrument of writing, by any photostatic or photographic process. Section 2778 of the General Code fixes the fees of the county recorder for recording instruments at twelve cents per hundred words actually written, typewritten or printed on the record.

Question: When the photostatic or photographic process is used in recording instruments in the recorder's office, may the recorder collect the fees specified in section 2778 of the General Code, at the rate of twelve cents per hundred words for the number of words so recorded by photostatic or photographic process?"

Section 32-1 of the General Code provides:

"Whenever any officer, office, court, commission, board, institution, department, agent, or employe of the state, or of any county of more than 50,000 population, according to the next preceding federal census, is required or authorized by law, or has the duty to record or copy any document, plat, paper, or instrument of writing, such recording or copying, may be done by any photostatic or photographic process which clearly and accurately copies, photographs, or reproduces the original document, plat, paper or instrument of writing."

Section 2778, General Code, enacted in 1902 (95 O. L. 606) is in the following language:

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

The fees in this section provided shall be paid upon the presentation of the respective instruments for record upon the application for any certified copy of the record."

The first statute fixing fees to be charged by the recorder was enacted in 1831 (29 O. L. 219), and provided that the recorders should receive the following fees:

"For recording a mortgage, deed of conveyance, letter of attorney, or other instrument of writing, for every hundred words, ten cents * * *."

This statute was amended in 1891 (88 O. L. 577) to provide a recording fee of "twelve cents for every hundred words actually written on the record." Originally the statute did not prescribe the manner in which the record should be made. In the amendment in 1891 increasing the fee, the words "actually written on the record" were added. No doubt at this time it was the practice to transcribe the contents of the instrument in handwriting. In 1902 the legislature saw fit to extend the fees to recorders who adopted the more modern methods of typewriting and printing.

In 1929 when section 32-1 was enacted, the words, "written, typewritten or printed" in section 2778 were not changed. It follows that unless the photostatic

or photographic process is included within some one of these terms, the fee provided in section 2778 cannot be charged for records made by this process.

The photostatic process more nearly resembles printing than it does writing or typewriting. The first definition of "printing" contained in Webster's New International Dictionary is, "Act, art, or practice of impressing letters * * *." No doubt, when section 2778 was enacted, the ordinary meaning of printing involved the use of pressure. That pressure is not the only means of printing is shown by the second definition of the term found in Webster's:

"Act or art of producing a positive photographic picture from a negative by the action of sunlight or other actinic rays on sensitized paper."

Letters and documents now required to be reproduced in large numbers are copied by the photographic process. This process falls within the second definition of printing above quoted. The distinction between this method of reproduction and the photostatic process, which involves making a negative from a positive print, appears to me immaterial. Neither method requires the application of pressure.

Even though the ordinary conception of printing at the time of the enactment of section 2778 involves reproduction by the use of pressure, it does not follow that a new and different method of obtaining the same result is not within the meaning of the term. It is a well settled principle that the law becomes applicable to new inventions as new inventions come into use, without the same being especially included. This principle was applied in an opinion of this office, reported in Opinions of the Attorney General, 1913, Volume I, page 137, where a peddler's license law, in terms applicable only to one using a one-horse vehicle, two-horse vehicle, a boat, watercraft or a railroad car was deemed applicable to a peddler who used a motor truck.

In view of the foregoing, I am of the opinion that the photostatic or photographic process, authorized by section 32-1 of the General Code, is included within the term "printing" as used in section 2778, and therefore a county recorder using such process for recording instruments, may collect the fees specified in that section.

168.

CRIMINAL RECOGNIZANCE—NOTICE OF STATE'S LIEN NEED NOT
BE COPIED IN A BOOK BUT MUST BE INDEXED—NO FEES,
CHARGEABLE FOR FILING SUCH LIENS.

SYLLABUS:

1. *The county recorder has no duty to actually copy or record in a book either the notices of lien prescribed by section 13435-5 or the notices of discharge of such lien prescribed by section 13435-6, the only requirement being that the recorder shall index all such notices in a book or record as they are filed in his office.*

OPINION NO. 65-173

Syllabus:

1. It is permissible to photograph the deed and at the same time microfilm the deed, whereby the microfilm would be retained for preservation of the record of the deed, and the photograph would be bound in a volume for use in the Recorder's office by the public.

2. It is permissible for the County Recorder to microfilm a deed only and thereupon have a copy prepared from the microfilm by electrostatic process and bind these copies into a volume for use by the public.

3. It is permissible for the County Recorder to microfilm the deed and to make available to the general public for use in the Recorder's office the microfilm alone by making available sufficient viewers to enlarge the microfilm.

To: Paul J. Mikus, Lorain County Pros. Atty., Elyria, Ohio
By: William B. Saxbe, Attorney General, September 24, 1965

Your request for my opinion is as follows:

"Our office has been requested by Leota B. Mitchell, Lorain County Recorder, to seek your opinion regarding the legality of the County Recorder using any one of the following procedures for the purpose of recording documents as required under the statutes:

"1. Is it permissible to photograph the deed and instantaneously microfilm the deed, whereby the microfilm would be retained for preservation of the record of the deed, and the photograph would be bound in a volume for use in the Recorder's office by the public?

"2. Is it permissible for the County Recorder to microfilm a deed only and thereupon have a copy prepared from the microfilm by electrostatic process and bind these copies into a volume for use by the public?

"3. Is it permissible for the County Recorder to microfilm the deed and to make available to the general public for use in the Recorder's office the microfilm alone by making available sufficient viewers to enlarge the microfilm?

"It is the view of our office that any three of the methods is permissible reading Ohio Revised Code Sec. 317.13 in conjunction with Section 9.01, notwithstanding the view of your predecessor in his Opinion No. 1389 issued in 1950."

The use of the microfilm process of reproduction for the purpose of recording documents as required by statute was opined to be permissible in Opinion No. 2129, Opinions of the Attorney General for 1961, page 184. The syllabus of that opinion is as follows:

"Pursuant to the provisions of Section 9.01, Revised Code, the public officials therein enumerated, are authorized to use the microfilm process of reproduction for the recording, filing, maintaining and preserving of records they are required to record, file, maintain and preserve, and to dispose of the original records or copies of such records in accordance with the provisions of Sections 149.31, 149.32, 149.37, 149.38, 149.39, 149.41 and 149.42, Revised Code."

Opinion No. 1389, Opinions of the Attorney General for 1950, page 39, was overruled in 1955. The syllabus of the overruling opinion, Opinion No. 5667, Opinions of the Attorney General for 1955, page 371, is as follows:

"A Probate Court may make up a record in so far as same is required by Sections 2101.12, 3107.14, 5123.37, 5123.38 and 5731.48, Revised Code, by microfilming or other duplication process as authorized by Section 9.01, Revised Code, provided the original documents are maintained on file and until their eventual destruction is accomplished only in accordance with the provisions of Section 149.38, Revised Code. Opinion No. 1389, Opinions of the Attorney General for 1950, page 39, overruled."

Section 9.01, Revised Code, provides for photostat or microfilm recording as follows:

"When any officer, office, court, commission, board, institution, department, agent, or employee of the state, or of a county, or any political subdivision, who is charged with the duty or authorized or required by law to record, preserve, keep, maintain, or file any record, document, plat, court file, paper, or instrument in writing, or to make or furnish copies of any thereof, deems it necessary or advisable, when recording any such document, plat, court file, paper, or instrument in writing, or when making a copy or reproduction of any thereof or of any such record, for the purpose of recording or copying, preserving, and protecting the same, reducing space required for storage, or any similar purpose,

to do so by means of any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process, which correctly and accurately copies or reproduces, or provides a medium of copying or reproducing, the original record, document, plat, court file, paper, or instrument in writing, such use of any such photographic processes, for any such purpose, is hereby authorized. Any such records, copies, or reproductions may be made in duplicate, and such duplicates shall be stored in different buildings. The film or paper used for this process shall be of acetate base and shall comply with the minimum standards of quality approved for permanent photographic records by the national bureau of standards.

"Any such officer, office, court, commission, board, institution, department, agent, or employee of the state, a county, or any political subdivision may purchase or rent required equipment for any such photographic process and may enter into contracts with private concerns or other governmental agencies for the development of film and the making of reproductions thereof as a part of any such photographic process. When so recorded, or copied or reproduced to reduce space required for storage or filing of such records, said photographs, microphotographs, microfilms, or films, or prints made therefrom, when properly identified by the officer by whom or under whose supervision the same were made, or who has the custody thereof, have the same effect at law as the original record or of a record made by any other legally authorized means, and may be offered in like manner and shall be received in evidence in any court where such original record, or record made by other legally authorized means, could have been so introduced and received. Certified or authenticated copies or prints of such photographs, microphotographs, films, or microfilms shall be admitted in evidence equally with the original photographs, microphotographs, films, or microfilms.

"Such photographs, microphotographs, microfilms, or films shall be placed and kept in conveniently accessible, fireproof, and insulated files, cabinets, or containers, and provisions shall be made for preserving, safekeeping, using, examining, exhibiting, projecting, and enlarging the same whenever requested, during office hours."

This code section applies to any records that the County Recorder would be required to maintain according to Section 317.08, Revised Code, and clearly permits using the first two procedures enumerated in your letter of request.

Although Section 317.29, Revised Code, provides for transcribing defaced or injured records into new books there is no statutory requirement that records take the form of a book or bound volume.

Section 317.07, Revised Code, requires a retiring County Recorder to deliver his seal, books, papers, and records to his successor. This supports the conclusion that records can be other than books. Such an interpretation is consistent with the language and meaning of Section 9.01, Revised Code, and supports the use of the third procedure enumerated in your letter of request. To satisfy the code sections setting forth requirements for indexing and endorsing records and instruments recorded, the microfilm to be viewed must be maintained in a manner permitting reference thereto by number, file, page, volume, and deed book number. The code sections to which this is applicable are Sections 317.09, 317.12, 317.18, 317.20, 317.201, 317.24, and 317.29, Revised Code.

In summary, it is my opinion that:

1. It is permissible to photograph the deed and at the same time microfilm the deed, whereby the microfilm would be retained for preservation of the record of the deed, and the photograph would be bound in a volume for use in the Recorder's office by the public.
2. It is permissible for the County Recorder to microfilm a deed only and thereupon have a copy prepared from the microfilm by electrostatic process and bind these copies into a volume for use by the public.
3. It is permissible for the County Recorder to microfilm the deed and to make available to the general public for use in the Recorder's office the microfilm alone by making available sufficient viewers to enlarge the microfilm.

OPINION NO. 65-176

Syllabus:

When a 1 mill levy has been reduced by the county auditor to .9 (nine-tenths) mill by reason of Section 5713.11, Revised Code, and it is proposed to "renew" the levy for another term at the original rate, the form of the ballot under Section 5705.25, Revised Code, should show that the levy will consist of a renewal of .9 (nine-tenths) mill and an increase of .1 (one-tenth) mill, to constitute a tax not exceeding 1 mill.

To: David F. McLain, Trumbull County Pros. Atty., Warren, Ohio
By: William B. Saxbe, Attorney General, September 27, 1965

Westlaw

1990 Ohio Op. Atty. Gen. 2-242, 1990 Ohio Op. Atty. Gen. No. 90-057, 1990
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Office of the Attorney General
State of Ohio

Opinion No. 90-057

September 7, 1990

SYLLABUS:

1. Pursuant to R.C. 9.01 and R.C. 317.13, a county recorder may utilize microfilming to fulfill his statutory duties to record instruments under R.C. Chapter 317.

2. Subject to the provisions of R.C. 149.351(A), a county official may, pursuant to a valid contract, temporarily transfer physical custody of the records of his office to a private contractor to microfilm such records at the facilities of the contractor. The contract must incorporate sufficient safeguards to prevent loss, damage, mutilation or destruction of the records.

The Honorable Paul F. Kutscher, Jr.
Seneca County Prosecuting Attorney

Dear Prosecutor Kutscher:

I have before me your request for my opinion concerning microfilming of the records of the county recorder. Specifically, you wish to know whether a county recorder may allow original documents presented to him for recording, to leave the physical custody of his office while being microfilmed, pursuant to a contract with a private business. [FN1]

The county recorder has the duty to:

record [FN2] in the proper record, in legible handwriting, typewriting, or printing, or by any authorized photographic process, all deeds, mortgages, plats, or other instruments of writing required or authorized to be recorded, presented to him for that purpose. Such instruments shall be recorded in regular succession, according to the priority of presentation, entering the file number at the beginning of such record. On the record of each instrument he shall record the date and precise time such instrument was presented for record. All records made, prior to July 28, 1949, by means authorized by this section or by section 9.01 of the Revised Code shall be deemed properly made. (Footnote added).

R.C. 317.13. Thus, the county recorder may record documents in the manner prescribed in R.C. 317.13 and R.C. 9.01.

The authority to microfilm documents is expressly granted in R.C. 9.01, which states in relevant part:

When any officer, office, ... department, agent, or employee ... of a county, ... who is charged with the duty or authorized or required by law to record, preserve, keep, maintain, or file any record, document, plat, court file, paper, or instrument in writing, or to make or furnish copies of any thereof, deems it necessary or advisable, when recording any such document, plat, court file, paper, or instrument in writing, or when making

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a copy or reproduction of any thereof or of any such record, for the purpose of recording or copying, preserving, and protecting the same, reducing space required for storage, or any similar purpose, to do so by means of any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process, or perforated tape, magnetic tape, or other magnetic means, electronic data processing, machine readable means, graphic or video display, or any combination thereof, which correctly and accurately copies, records, or reproduces, or provides a medium of copying, recording, or reproducing, the original record, document, plat, court file, paper, or instrument in writing, such use of any such photographic or electromagnetic processes, for any such purpose is hereby authorized. (Emphasis added.)

*2 See also 1965 Op. Atty Gen. No. 65-173 (R.C. 9.01 applies to the records of the county recorder and permits the microfilming of them); 1961 Op. Atty Gen. No. 2129, p. 184 (R.C. 9.01 expressly applies to all public officials enumerated therein and permits recording by the microfilm process). A county recorder is, therefore, authorized to record any of the documents listed in R.C. 317.13 by microfilming them. [FN3]

While a county recorder may microfilm records pursuant to R.C. 9.01, that statute prescribes few standards guiding the actual filming of records. Neither R.C. 9.01 nor any other statutory provision prohibits county records from leaving the physical custody of the county official entrusted with them. Nor is there a prohibition against temporarily surrendering physical custody of the records to have them filmed off-site from the recorder's office. I note, moreover, that the legislature, by enacting R.C. 307.802 and R.C. 307.806, has indirectly approved the temporary transfer of documents for microfilming. R.C. 307.802, applicable to counties with a county microfilm board, allows contracts for microfilm services with private or governmental services and also allows the establishment of a centralized county microfilm center. Further, R.C. 307.806 allows a county to enter into a contract with another county's microfilm board for microfilm services to county offices. Each of these options contemplates the filming of documents at a location remote from a particular county office.

Since the statutes from which is derived the power to have county records microfilmed off-site do not prescribe the method of exercising that power, the legislative intent is that the power be exercised in a reasonable manner. See *Jewett v. Valley Railway Co.*, 34 Ohio St. 601 (1878). Reasonableness depends on the surrounding circumstances and factors which are best determined by those at the local level. 1988 Op. Atty Gen. No. 88-087.

A county recorder's reasonable exercise of the power to microfilm records must contemplate the recorder's duty to safeguard the records of his office. This duty is highlighted by the express wording of R.C. 9.01, which permits recording documents by microfilming "for the purpose of ... preserving, and protecting the same." R.C. 317.07 also specifically requires each county recorder to deliver to his successor "all books, records and other instruments of writing belonging to the office." R.C. 149.351(A), which is applicable to all county offices, pursuant to R.C. 149.011(A) and (B), contains a similar provision, stating, in part, that all "records shall be delivered by outgoing officials and employees to their successors and shall not be otherwise removed, transferred, or destroyed unlawfully." R.C. 149.351(A) further provides that no records shall be "removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the records commissions provided for under sections 149.38 to 149.42 of the Revised Code ." [FN4]

*3 The proper exercise of the power to microfilm, thus, may be subject to compliance with the rules of the county records commission. One of the commission's duties is "to provide rules for the retention and disposal of records of the county." R.C. 149.38. Such rules may serve as guidelines for the transfer or removal of records. R.C. 149.351(A). No statutory definition or judicial opinion examines the use of the terms "transfer" and "removal" in R.C. 149.351. Lacking such definition, terms are interpreted according to their common meaning.

R.C. 142; *State v. Dorso*, 4 Ohio St.3d 60, 446 N.E.2d 449 (1983). One of the various meanings of "transfer" is "to convey, carry, remove, or send from one person, place, or position to another." Webster's New World Dictionary (2d ed. 1984) 1509. "Remove" means "to move (something) from where it is, lift, push, transfer, or carry away, or from one place to another." *Id.* at 1202. Both terms, thus, have definitions broad enough to require that any transfer or removal involving the moving of records from the custody of the county recorder be pursuant to the requirements of R.C. 149.351(A).

In 1986 Op. Atty Gen. No. 86-057, at 2-315, I stated that the words "transferred" and "removed" do not refer "to the precise location in which records are kept but to the fact that they are to be retained in proper custody and held securely." (Emphasis added.) I further explained that the "determination as to whether a particular movement of records is permissible under R.C. 149.351 must be made on a case-by-case basis, in light of all of the relevant facts." *Id.* Under the facts presented by your request for my opinion, it is clear that the county recorder is surrendering physical custody of the records of his office, albeit temporarily, to a private company. The records, therefore would be completely out of the control and custody of the county recorder and his employees. Under such circumstances, compliance with R.C. 149.351 is required before the records may be transferred or removed from the custody of the county recorder. [FN5]

It is therefore my conclusion, and you are so advised that:

1. Pursuant to R.C. 9.01 and R.C. 317.13, a county recorder may utilize microfilming to fulfill his statutory duties to record instruments under R.C. Chapter 317.
2. Subject to the provisions of R.C. 149.351(A), a county official may, pursuant to a valid contract, temporarily transfer physical custody of the records of his office to a private contractor to microfilm such records at the facilities of the contractor. The contract must incorporate sufficient safeguards to prevent loss, damage, mutilation or destruction of the records.

Respectfully,
Anthony J. Celebrezze, Jr.
Attorney General

[FN1] You have not asked and I am rendering no opinion on whether the contract was properly entered into by the county. For purposes of this opinion, therefore, I assume that the contract entered into for the purpose of microfilming records of the county recorder is a valid contract.

[FN2] Recording is understood to mean "the copying of [an instrument] into the public records kept for that purpose, by or under the direction or authority of the proper public officer." *Green v. Garrington*, 16 Ohio St. 548, 550 (1866).

[FN3] The authority to utilize the microfilm process to record the records of the county recorder is subject, however, to the approval and supervision of the county microfilming board, if the board of county commissioners has established such a board. R.C. 307.80; R.C. 307.802; R.C. 307.804. The provisions of R.C. 307.80 through R.C. 307.806, concerning the operation of county microfilm boards, are not applicable to the Seneca County recorder inasmuch as the Seneca County board of commissioners has not established a county microfilming board. If no county microfilm board is established, R.C. 9.01 permits a county office to "purchase or rent required equipment ... and [to] enter into contracts with private concerns ... for the development of film and the making of reproductions thereof as a part of any such photographic process." (Emphasis added). R.C. 9.01 does not expressly authorize a contract for the microfilming of the original documents.

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[FN4] R.C. 149.38 creates in each county a county records commission. See also 1960 Op. Atty Gen. No. 1348, p. 335 (any public officer or body having control of public records of the county is subject to the jurisdiction of the county records commission established by R.C. 149.38). The county recorder is a statutorily designated member of the county records commission. R.C. 149.38.

[FN5] Inasmuch as the Seneca County board of commissioners has not established a county microfilming board, I expressly reserve my opinion as to whether R.C. 307.802 is a provision of law referred to in R.C. 149.351 that eliminates the necessity for compliance with a rule of a county records commission regarding transfer or removal of records.

1990 Ohio Op. Atty. Gen. 2-242, 1990 Ohio Op. Atty. Gen. No. 90-057, 1990 WL 546978 (Ohio A.G.)
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Direct Dial: 216.430.2029
E-mail: dmovius@mcdonaldhopkins.com

P 216.348.5400
F 216.348.5474

April 13, 2011

Via Federal Express

Michael Stutzman
Operations Manager
Data Trace Information Services
7340 Shadeland Station, Suite #125
Indianapolis, Indiana 46255

Re: *State ex rel Data Trace et al. v. Recorder of Cuyahoga County, Ohio*
Ohio Supreme Court
Case Nos. 10-1823, 10-2029

Dear Mr. Stutzman:

I represent Cuyahoga County in the above-captioned case. Mark Parks, Cuyahoga County's Acting Fiscal Officer, asked me to respond on his behalf to your recent undated letter, and your counsel indicated that he does not object to me responding directly to you.

I do not believe there is any misunderstanding as you suggest. Cuyahoga County agrees that Data Trace can have copies of the documents it has requested and Data Trace agrees that it must pay for those copies. The only question is how much Data Trace must pay. It remains my client's position that, under the controlling statutes and consistent with the opinion of the Ohio Attorney General since at least 1933, Data Trace must pay the \$2-per-page fee enacted by the Ohio General Assembly that every other member of the general public must pay.

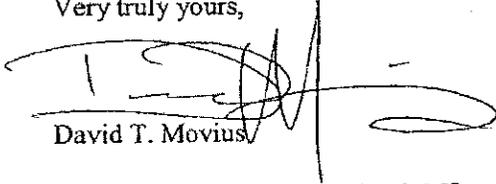
With that being said, Cuyahoga County will consider any reasonable proposal Data Trace may have to resolve this dispute, as I previously discussed with your counsel. Any resolution, however, cannot conflict with Cuyahoga County's existing statutory obligations. That includes sections 325.32 and 325.36 of the Ohio Revised Code, which prohibit Cuyahoga County from charging any more or any less than the proper statutory fee.

Finally, Data Trace is mistaken if it believes that it can bully its way to a better financial deal from the citizens of Cuyahoga County by using its counsel's media connections as leverage. I

Michael Stutzman
April 13, 2011
Page 2

suggest you ask yourself how you would react if your employees were subjected to the same litigation tactics. I also would be happy to explain to you why "photocopying" includes copying digital images under Ohio law, since there seems to be some misunderstanding on that issue.

Very truly yours,



David T. Movius

cc: Mark Parks, Acting Fiscal Officer
David Marburger, Esq.
Matthew Cavanagh, Esq.

{2670306}

McDonald Hopkins LLC
Attorneys at Law

Direct Dial: 216.430.2029
E-mail: dmoivius@mcdonaldhopkins.com

P 216.348.5400
F 216.348.5474

April 13, 2011

Via Federal Express

Mike Carsella
Property Insight
505 East North Avenue, Suite 200
Carol Stream, IL 60188-4848

**Re: *State ex rel Data Trace et al. v. Recorder of Cuyahoga County, Ohio*
Ohio Supreme Court
Case Nos. 10-1823, 10-2029**

Dear Mr. Carsella:

I represent Cuyahoga County in the above-captioned case. Mark Parks, Cuyahoga County's Acting Fiscal Officer, asked me to respond on his behalf to your recent undated letter, and your counsel indicated that he does not object to me responding directly to you.

I do not believe there is any misunderstanding as you suggest. Cuyahoga County agrees that Property Insight can have copies of the documents it has requested and Property Insight agrees that it must pay for those copies. The only question is how much Property Insight must pay. It remains my client's position that, under the controlling statutes and consistent with the opinion of the Ohio Attorney General since at least 1933, Property Insight must pay the \$2-per-page fee enacted by the Ohio General Assembly that every other member of the general public must pay.

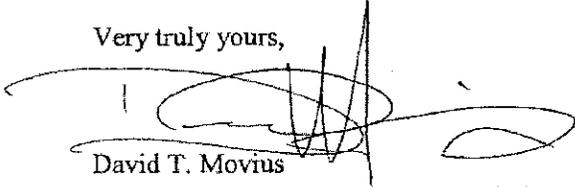
With that being said, Cuyahoga County will consider any reasonable proposal Property Insight may have to resolve this dispute, as I previously discussed with your counsel. Any resolution, however, cannot conflict with Cuyahoga County's existing statutory obligations. That includes sections 325.32 and 325.36 of the Ohio Revised Code, which prohibit Cuyahoga County from charging any more or any less than the proper statutory fee.

Finally, Property Insight is mistaken if it believes that it can bully its way to a better financial deal from the citizens of Cuyahoga County by using its counsel's media connections as leverage.

Mike Carsella
April 13, 2011
Page 2

I suggest you ask yourself how you would react if your employees were subjected to the same litigation tactics. I also would be happy to explain to you why "photocopying" includes copying digital images under Ohio law, since there seems to be some misunderstanding on that issue.

Very truly yours,

A handwritten signature in black ink, appearing to read "David T. Movius". The signature is stylized with large loops and a prominent vertical stroke.

David T. Movius

cc: Mark Parks, Acting Fiscal Officer
David Marburger, Esq.
Matthew Cavanagh, Esq.

{2670308.}

McDonald Hopkins LLC
Attorneys at Law

8/27/00 Plain Dealer (Clev.) 15A
2000 WLNK 9035381

Cleveland Plain Dealer

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August 27, 2000

Section: NATIONAL

HOW THE DATA WAS ANALYZED
BOB PAYNTER

In preparing these stories, The Plain Dealer analyzed a database assembled by Cleveland State University from public records detailing all property transfers in Cuyahoga County from 1976 through April 2000.

The database, covering more than 1.2 million property transfers, identifies the address, the buyer and seller, the amount paid and the date of sale, among other things, for all property transfers.

Using newsroom computers, a reporter isolated all transfers during that period in which money changed hands (573,123), and further divided those transactions into two groups: residential properties in Cleveland and in the Cuyahoga County suburbs that changed hands at least twice over that span.

In Cleveland, that analysis identified 41,087 properties, which accounted for 69,438 resales during the 24-year period.

In the county's suburban communities, 89,553 residential properties sold more than once over that period, accounting for 146,049 resales.

For each group, the newspaper identified all properties that were resold within 90 days of a previous sale and for which the resale price was at least 50 percent higher than the previous sale amount. It then grouped them by year of resale.

The results: 964 such "flip" transactions occurred in Cleveland from 1997 through April, more than in the previous 20 years combined. Those sales generated \$31.9 million in price markups for the sellers.

In the county's suburbs, where far more properties are sold each year than in Cleveland, only 233 such "flips" occurred since 1997 - generating \$14.2 million in price markup - and were actually on the decline over the last two decades.

Using mapping software, the newspaper also plotted the recent Cleveland "flips" against 1990 poverty rates, revealing that these transactions have been concentrated most heavily in poorer neighborhoods on the city's East Side.

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