

CHATTEL MORTGAGES!
RECORDER OF DEEDS

Instruments affecting title to real estate and personal property need not be filed in a separate book for the filing of chattel mortgages where such instruments have been duly recorded in a book as conveyances of land, but should index in a book used for indexing and filing all chattel mortgages, upon request of mortgagee or grantee.

April 13, 1937

4-23



Mr. J. H. Kennedy
Circuit Clerk
Grundy County
Trenton, Missouri

Dear Mr. Kennedy:

This will acknowledge receipt of your request for an opinion, which reads as follows:

"On January 25th, 1937, we received from the Missouri Public Service Corporation for recordation one Indenture and one Supplemental Indenture in the nature of a deed of trust to secure to Continental Illinois National Bank and Trust Company of Chicago, for the issuance of bonds.

This indenture includes both real estate and personal property belonging to said Missouri Public Service Corporation, and was recorded in the Miscellaneous Deed of Trust Record and such notations made on the indenture.

We have been asked by the Attorneys for Missouri Public Service Corporation that this indenture also be indexed in the Chattel Mortgage Register.

We would like to have your opinion as to whether this indenture should be recorded and indexed in both Miscellaneous Deed Record and the Chattel Mortgage Record."

Appended to your request for an opinion is the original letter from the law offices of Chapman and Cutler, requesting the recordation of certain indentures.

At the outset of this opinion, we may well observe that the recording or filing of written instruments, as required by law, have for their object the imparting of notice. There are a few exceptions, but none that need be considered in this opinion. As relates to the duty imposed upon the Recorder of Deeds in recording conveyances of personal property, your attention is directed to Section 11545, R. S. Mo. 1929, which reads as follows:

"Instruments in writing, conveying chattels or personal property done, which by any law of this state are required to be recorded or admitted of record in any recorder's office in this state, shall be recorded in a series of volumes separate from those used for recording conveyances of real estate."

In the case of *Faxon vs. Ridge*, 87 Mo. App. 299, l.c. 307, the court in considering a lease that was recorded in the records affecting real estate and not in the record for chattel mortgages and also construing what is now Section 11545, supra, said:

"The agreed statement of facts shows that the lease was recorded in the records affecting real estate and not in the record for chattel mortgages. The question, therefore, is, where the same instrument affects both real and personal property, will a recording in the records for real estate be a sufficient recording of the instrument as a chattel mortgage. In our opinion, it will. It was so held in an opinion by Judge Rombauer in *Jennings v. Sparkman*, 39 Mo. App. 663.

See, also, Anthony v. Butter, 13 Peters 423. The statute itself, while providing for separate registration, does not apply to cases where the instrument conveys both kinds of property. The statute (Section 9064, R. S. 1899) only directs separate recording in a chattel record where the instrument conveys 'personal property alone.'

In the case of Jennings vs. Sparkman, 39 Mo. App. 663, l.c. 668, the court in construing Section 11545, supra, said:

"We concede the position, contended for, that instruments, in order to impart constructive notice, must not only be recorded in the proper county, but also in the proper book, but we find nothing in the statutes, reading them together, or even seriatim, which leads to the conclusion that, where the same instrument affects real estate and conveys personal property, the law necessitates in all cases a double record. The word 'alone' in the section last quoted, can certainly not be rejected as surplusage."

In the case of Emerson-Brantingham Implement Co. v. Rogers, et al, 216 S. W. 994, l.c. 996, the court had before it for consideration the validity of a conveyance that had been improperly recorded by the Recorder of Deeds. The court in passing upon what are now Sections 3097, 3040, 11545, supra, R. S. Mo. 1929, said:

"Applying this rule to the case in hand, it would appear that the failure to make a proper index of this chattel mortgage did not affect its validity. Nor do we think that imparting notice in the case of a real estate mortgage

or the validity of a chattel mortgage is dependent, not only on its being filed and recorded, but recorded in the proper book. That is a collateral matter, imposed by another and subsequent section of the statute than the one declaring that unrecorded chattel mortgages are void as to third parties. The statute (section 2861) declaring when chattel mortgages shall not be valid declares that effect 'unless the mortgage or deed of trust be acknowledged or proved and recorded in the county in which the mortgagor or grantor resides, in such manner as conveyances of land are by law directed to be acknowledged or proved and recorded.' This section, like the corresponding one relative to real estate (section 2810) is found under the subject of 'conveyances,' while the section requiring chattel mortgages to be recorded in separate books from real estate conveyances (section 10383), like that requiring a proper index (section 10384), is found under the subject of 'Recorder of Deeds' and prescribing his duties. These are duties imposed on the recorder, for the violation of which he is responsible; but they do not go to the validity of the conveyance."

From the above considerations, you will note that as affects the validity of a written instrument, it is not necessary that mortgages of personalty, which are included in a conveyance affecting real estate, need be filed and recorded by the Recorder in a volume separate from those used for the recordation or filing of realty alone.

Your further attention is directed to Section 11543, R. S. Mo. 1929, which reads in part as follows:

"It shall be the duty of recorders to record: First, all deeds, mortgages, conveyances, deeds of trust, bonds,

covenants, defeasances, or other instruments of writing, of or concerning any lands and tenements, or goods and chattels, which shall be proved or acknowledged according to law, and authorized to be recorded in their offices; * * "

We observe from the reading of the above sections of the statute that, when the Recorder has recorded an instrument which affects both realty and personalty, the intendments of the above section of the statutes have been subserved.

Your attention is further directed to Art. III, R. S. Mo. 1929, relating to chattel mortgages, particularly Sec. 3099, as amended, Laws of Mo. 1935, page 208, which reads in part as follows:

"Such recorder shall enter in a book, to be provided by him for such purpose, the names of all the parties to such instrument, arranging the names of such mortgagors or grantors alphabetically, and shall note thereon the time of filing such instrument or copy, for which said recorder shall receive a fee of twenty cents. Said fee shall also include and cover all costs for discharging said mortgage or deed of trust according to the methods hereinafter provided.
* * * *"

The above part of the statute contemplates the furnishing of a book by the recorder for the purpose of indexing all mortgages or deeds of trust concerning personalty. Since the statute contemplates indexing and discharging of deeds of trust concerning personalty, we see no objection on the part of the recorder in indexing an indenture covering realty which also includes a mortgage of personalty in the book used by the recorder for the purpose of indexing and discharging of mortgages or deeds of trust concerning personalty.

April 13, 1937

CONCLUSION

In view of the above, it is the opinion of this department that the recorder of deeds is not required to index and record an indenture affecting both realty and personalty in a book used for the indexing and recording of chattel mortgages, since the indenture has been duly recorded in the book used for recording of conveyances of land. However, we see no harm in indexing an indenture affecting both realty and personalty in the book used for the indexing of chattel mortgages when such a request has been made by the mortgagee or grantee and fee paid therefor.

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

J. U. TAYLOR
(Acting) Attorney General

RCS:RT