

RECORDER OF DEEDS: It is not mandatory that recorder of deeds file a bill of sale (1) when it has neither been acknowledged nor witnessed nor (2) when it has been witnessed but not acknowledged. It is mandatory that the recorder of deeds record a bill of sale which has been proved or acknowledged according to law.

September 15, 1951

9-18-51



Honorable John E. Downs
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

Dear Sir:

We have your letter requesting an opinion of this department, which letter reads as follows:

"The Recorder of Deeds of Buchanan County has requested this office to ask you for an official opinion with reference to the following:

"1. Is it mandatory for the Recorder of Deeds to file a Bill of Sale which has neither been acknowledged or witnessed?

"2. Is it mandatory for the Recorder of Deeds to file a Bill of Sale which has been witnessed but not acknowledged?

"3. Is it mandatory for the Recorder of Deeds to record a Bill of Sale which has been acknowledged or can be proven according to law?"

We are, after a thorough search, unable to find any statute making it mandatory for the recorder of deeds to file a Bill of Sale which has neither been acknowledged nor witnessed. This, we believe, answers the first question set out above.

The reason set forth in answer to your first question is the one we find for holding that it is not mandatory for the recorder of deeds to file a Bill of Sale which has been witnessed but not acknowledged. This, we believe, answers your second question.

Section 59.330, RSMo, 1949, provides as follows:

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"It shall be the duty of recorders to record:

"(1) 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;

"(2) All papers and documents found in their respective offices, of and concerning lands and tenements, or goods and chattels, and which were received from the Spanish and French authorities at the change of government;

"(3) All marriage contracts and certificates of marriage;

"(4) All commissions and official bonds required by law to be recorded in their offices;

"(5) All written statements furnished to him for record, showing the sex and date of birth of any child or children, the name, business and residence of the father, and maiden name of the mother of such child or children."
(Underscoring ours.)

We believe that the language of the underscored part of the statute above set out is plain and especially the last part which reads as follows:

"* * *and authorized to be recorded in their offices;"

We interpret this to mean that the recorder of deeds is under no obligation to record any absolute bill of sale whether the same is properly acknowledged or proven according to law presented to him for recording as there is no statute in this state which recites that absolute bills of sale must be recorded. (See Faircloth v. Tinsley et al., 83 Mo. App. Reports 586; Kuykendall v. McDonald, 15 Mo. 416.

However, Section 428.080, RSMo. 1949, provides as follows:

"* * *and no sale of goods and chattels, where possession is delivered to the vendee, shall be subject to any condition

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whatever as against creditors of the vendee, or subsequent purchasers from such vendee in good faith, unless such condition shall be evidenced by writing, executed and acknowledged by the vendee, and recorded as now provided in cases of mortgages of personal property."

The above section authorizes a bill of sale containing a condition to be recorded. *Kuykendall v. McDonald*, 15 Mo. 416, and *Faircloth v. Tinsley*, 83 Mo. App. 586, both state that there is no statute requiring an absolute bill of sale of personal property to be recorded. This is a true statement of the law because only conditional bills of sale under the statute must be recorded. However, it is doubtful whether the recorder of deeds has the right to determine what is and what is not a conditional bill of sale so as to refuse to record an instrument presented to him. *Weyrauch v. Johnson*, 201 Iowa 1197, 208 N.W. 706 lays down the rule that the recorder of deeds is a ministerial officer without judicial power to determine the legal validity or effect of the instruments presented to him. Therefore, it would appear that the recorder of deeds is authorized to record a bill of sale if it contains a condition and what is condition is a legal question which cannot be determined by the recorder. Therefore, it would appear that the recorder is authorized to record a bill of sale.

CONCLUSION

It is, therefore, the opinion of this department that it is not mandatory that the recorder of deeds file a Bill of Sale (1) when it has neither been acknowledged nor witnessed nor (2) when it has been witnessed but not acknowledged; (3) that it is mandatory that the recorder of deeds record a Bill of Sale which has been proved or acknowledged according to law when the same is presented to him with the proper fee.

APPROVED:


J. E. TAYLOR
Attorney General

Respectfully submitted,

A. BERTRAM ELAM
Assistant Attorney General

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