

RECORDER OF DEEDS: Recorder of deeds of trust of third-class county  
THIRD CLASS COUNTIES: keeping marginal release of deeds of trust record  
DUTIES: receiving additional compensation of one thousand  
COMPENSATION: dollars per year therefor, under Section 59.255,  
RSMo 1959, and who adopts microfilming for recording all  
instruments, as provided by Section 109.120(3), RSMo Cum.  
Supp. 1963, is not relieved of duty to keep marginal release  
of deeds of trust record. He shall continue keeping said  
record and receiving compensation therefor, as long as all  
previously nonmicrofilm-recorded deeds of trust capable of  
release by marginal entry remain unsatisfied of record. When  
all such deeds of trust have been satisfied of record,  
recorder shall cease to keep marginal release of deeds of  
trust and shall not be paid any further compensation for  
keeping said record.

OPINION NO. 57

April 24, 1964

Honorable Charles P. Moll  
Prosecuting Attorney  
Franklin County  
Union, Missouri



Dear Mr. Moll:

This office is in receipt of your request for a legal opinion which reads as follows:

"The Recorder of Deeds has requested that I write for an Opinion regarding Section 59.255 R.S. Mo. 1959 in conjunction with Section 109.120 (3) passed in the last Session of the Legislature.

"In particular, Section 59.255 imposes the duty on Recorders in the 3rd class to maintain a separate 'marginal release of deeds of trust index' for which he receives additional compensation in the sum of One Thousand (\$1,000.00) Dollars. The new Section 109.120 (3) provides that in all cases where instruments are microfilmed, no release shall be made by marginal entry, but shall be made by separate instrument.

"The question therefore resolves itself in this manner:

"If the Recorder changes his system of recording to micro-film in a 3rd class county, will

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he thereby lose the additional compensation provided in Section 59.255?"

Section 109.120 (3), RSMo Cum. Supp. 1963, permits a recorder of deeds to record instruments required or authorized to be recorded in his office, by photostatic, photographic, microphotographic, microfilm or similar mechanical process, and reads as follows:

"3. When any recorder of deeds in this state is required or authorized by law to record, copy, file, recopy, replace or index any document, plat, map or written instrument, he may do so by photostatic, photographic, microphotographic, microfilm, or similar mechanical process which produces a clear, accurate and permanent copy of the original. The reproductions so made may be used as permanent records of the original. When microfilm or a similar reproduction is used as a permanent record by recorder of deeds, duplicate reproductions of all recorded documents, indexes and files required by law to be kept by him shall be made and one copy of each document shall be stored in a fireproof vault and the other copy shall be readily available in his office together with suitable equipment for viewing the filmed record by projection to a size not smaller than the original and for reproducing copies of the recorded or filmed documents for any person entitled thereto. In all cases where instruments are recorded under the provisions of this section by microfilm, any release, assignment or other instrument affecting a previously recorded instrument by microfilm may not be made by marginal entry but shall be filed and recorded as a separate instrument and shall be in a separate book, cross-indexed to the document which it affects."

(Emphasis ours.)

Franklin County is one of the third class in which the offices of circuit clerk and recorder of deeds are separate, and the above-quoted section is applicable to said county. It is the duty of the

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recorder of such county to keep the marginal release of deeds of trust record and make the entries therein provided by Section 59.255, supra, whenever the circumstances may so require. For performance of such duties he shall be paid additional compensation, i.e., compensation in addition to all other compensation authorized by law in the sum of one thousand dollars per year out of the county treasury.

Section 109.120 (3), supra, provides that when the recorder of deeds is required or authorized by law to record, copy, file, recopy or index any document or written instrument, he may do so by photostatic, photographic, microphotographic, microfilm or other similar mechanical process which produces a clear, accurate and permanent copy of the original. The reproductions so made may be used as permanent records of the original.

In the event a recorder of a third-class county were to adopt microfilming as the system of recording all instruments required or authorized by law to be recorded in his office, he could not use the "marginal release of deeds of trust" record for showing the information therein required by Section 59.255, supra, regarding the marginal release of microfilm-recorded deeds of trust as there cannot be any marginal release of such documents. Section 109.120 (3), supra, specifically provides that the release, assignment or other instrument affecting a previously microfilm-recorded instrument may not be made by marginal entry but shall be filed as a separate instrument in a separate book, cross-indexed to the instrument it affects.

Although there could not legally be marginal release of deeds of trust as to those recorded after the recorder had adopted microfilming as the system of recording all instruments, required or authorized to be recorded, he would not be relieved of the duty of keeping the marginal release of deeds of trust record imposed by Section 59.255. After adoption of that system, there would still be many previously nonmicrofilm-recorded deeds of trust unsatisfied on the record in such county, which may be released by a marginal entry.

Obviously there will continue to be marginal releases of deeds of trust for an indeterminate period of time in

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the future, and as long as there are deeds of trust non-microfilm-recorded in his office, which may be released on the margin of the record, it will continue to be the duty of the recorder of a third-class county to keep the "marginal release of deeds of trust" record, and to make the required entries therein whenever the circumstances regarding a particular deed of trust justify it as provided by said Section 59.255, supra.

As long as the recorder keeps said marginal release of deeds of trust, he shall be paid the compensation of one thousand dollars per year for his services in keeping such record. Thereafter, he shall no longer keep said record nor shall he be paid the one thousand dollars per year for keeping of such record.

#### CONCLUSION

Therefore, it is the opinion of this office that a recorder of deeds of a third-class county, who keeps the marginal release of deeds of trust record and receives one thousand dollars additional compensation per year for his services, as provided by Section 59.255, RSMo 1959, adopts microfilming as the system of recording all instruments required or authorized by law to be recorded in his office under provisions of Section 109.120 (3), RSMo Cum. Supp. 1963, is not relieved of the duty of keeping the marginal release of deeds of trust record. As long as previously nonmicrofilm-recorded deeds of trust, capable of being released by marginal entry, remain unsatisfied of record, said recorder shall continue to keep the marginal release of deeds of trust record and receive the compensation provided by Section 59.255, RSMo 1959. When all previously nonmicrofilm-recorded deeds of trust, capable of being released by marginal entry have been satisfied of record, the recorder shall cease to keep the marginal release of deeds of trust record and shall not be paid any further compensation for keeping said record.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Paul N. Chitwood.

Yours very truly,

  
THOMAS F. EAGLETON  
Attorney General