

December 23, 1976

OPINION LETTER NO. 4  
Answer by Letter - Klaffenbach

Honorable James Millan  
Prosecuting Attorney  
Pike County Courthouse  
Bowling Green, Missouri 63334



Dear Mr. Millan:

This is in response to your request for an opinion from this office as follows:

"May a Recorder record an instrument which does not affect title to real estate even though that instrument has not been notarized or acknowledged?"

"May a Recorder of Deeds record any instrument which does affect title to real estate if it has not been notarized or acknowledged?"

"The Recorder of Deeds of Pike County has received on several occasions various instruments which are not notarized or acknowledged but which are presented for recording. He has customarily refused to record these documents in view of the contents of Section 59.330 which sets forth the requirements of instruments to be recorded and in view of the opinions of your office and the cases in connection therewith noted under footnote two (acknowledgments of instruments) in the annotated statutes thereof. However, Section 490.340 of the Revised Statutes of Missouri would seem to presuppose that he can accept

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documents which have not been acknowledged nor approved according to law."

With respect to your first question as to whether or not a recorder may record an instrument which does not affect title to real estate even though the instrument has not been notarized or acknowledged, it is clear that it is a matter of common knowledge that many provisions of the statutes require or authorize instruments and documents to be filed or recorded in a recorder's office other than those specifically referred to in Section 59.330, RSMo. This fact is readily illustrated by the cross references given in Vernon's Annotations to that section.

We enclose Opinion No. 44, dated March 6, 1964, to Blackwell, which answers in part your second question asking whether or not a recorder of deeds may record any instrument which does affect title to real estate if it is not notarized or acknowledged.

We also enclose Opinion No. 234, dated October 18, 1965, to Barton; Opinion No. 269, dated June 18, 1968, to Whipple; Opinion No. 154, dated June 22, 1965, to Baldrige; Opinion No. 81, dated May 26, 1941, to Sherrod; Opinion No. 83, dated April 21, 1939, to Smith; Opinion No. 54, dated November 28, 1938, to Long; Opinion No. 61, dated July 26, 1935, to Mead; and Opinion No. 83, dated November 1, 1935, to Senti, all of which are self-explanatory. The answer to your second question then is that any document which affects title to realty is entitled to be recorded if it meets the conditions precedent to recording imposed by law. We caveat, however, in reaching this conclusion that the title examination standards of the Missouri Bar, V.A.M.S. Appendix, Chapter 442, should be taken into consideration. And, the recorder must bear in mind in reaching his individual determinations that Sections 59.650 and 59.660 impose liability and penalty provisions on him for neglect of duty. Therefore, the recorder clearly has the burden of making responsible individual decisions, and we do not purport to direct him as to his duties in each particular case which may come before him.

We point out that the delay in responding to your request has been caused by the relative broadness of your question and the impracticality of this office rendering a comprehensive opinion as to just what particular documents may or must be filed under the various statutes.

Primarily, your question arises out of the problem created by an interpretation of Section 490.340, RSMo, which was discussed

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comprehensively in Hatcher v. Hall, 292 S.W.2d 619 (Spr.Ct.App. 1956). In 1959, Section 490.340 was amended so that the language differed from that upon which the court ruled in the Hatcher case, and the legislature inserted in the first line of that sentence the words "or hereafter" which made such statute also one which operated prospectively. It is our view that that statute, however, does not in and of itself repeal or amend Section 59.330. That is, we view Section 490.340 as imparting notice of the contents of such defectively executed documents which come within the purview of that section to the same extent as would an identical recorded instrument or copy which is duly certified. That section does not make it the duty of the recorder to accept instruments which are not properly certified, or which are defectively certified, and not entitled to be recorded.

Very truly yours,

JOHN C. DANFORTH  
Attorney General

Enclosures: Op. No. 44, 3-6-64, Blackwell  
Op. No. 234, 10-18-65, Barton  
Op. No. 269, 6-18-68, Whipple  
Op. No. 81, 5-26-41, Sherrod  
Op. No. 83, 4-21-39, Smith  
Op. No. 54, 11-28-38, Long  
Op. No. 61, 7-26-35, Mead  
Op. No. 83, 11-1-35, Senti  
Op. No. 154, 6-22-65, Baldrige