RECORDER. (Grantees should be named in index
) in the manner their names appear
(in deed.

May 4, 1944

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Honorable Ross C. Ewing
Recorder of Deeds
Audrain County
Mexico, Missouri

Dear Mr. Ewing:

This will acknowledge the receipt of your inquiry of May 2, 1944, which is as follows:

"I would like your opinion of Section 13,164 Revised Statutes of Missouri, 1939, in regards to Deeds made to Husband and Wife, should the Grantees be listed as John Doe and Wife or John Doe and Mary his wife, this office has always listed like the first example and I would like to know if this is correct. "

Sec. 13164, R. S. Mo., 1939 is as follows:

"The recorder of each county in this state shall keep in his office a well-bound book or books, to be known as the 'abstract and index of deeds,' which shall have appropriate columnsproperly ruled and headed for each of the following items, namely: Names of grantors and grantees, date of instrument, date of filing instrument for record, nature of instrument, book and page where recorded, description of land conveyed or affected; said books shall be divided into two equal parts, the front part to be alphabetically arranged for the names of grantors, and the back part to be alphabetically arranged for the names of grantees."

In the case of State v. Corneli, 149 S. W. (2d), 815, 821, the court, in a case relating to a tax assessment, held:

"* * *We find nothing in the statutes requiring that assessments of personal property, or orders with reference thereto, shall be in the full, true, correct, and lawful name of the owner. Sec. 9791, R. S. 1929, Mo. St. Ann. Sec. 9791, p. 7897, provides that no assessment of property for taxes shall be considered illegal on account of any informality. See State ex rel. Wyatt v. Cantley, 325 Mo. 67, 26 S. W. 2d. 976, 979. Authorities in point however, are very limited. Most cases from other jurisdictions involve real estate or were decided under special statutes. The matter is discussed in 61 C. J. 707, Sec. 871, where it is said: 'Also, it seems that a designation is generally sufficient, if the name entered is one which the person commonly uses and the one by which he is generally known."* * *

"In the case of Carrall v. State, 53 Neb. 431, 73 N. W. 939, 940, a statute required the 'names of witnesses' to be endorsed on the information. The name 'Mrs. Fred Steinburg' was endorsed. The state sought to use Alena Mary Steenburg, wife of Paul Fred Steenburg, as a witness. Defendant contended the name of the witness was not endorsed. There was evidence that she gave her name as 'Mrs. Fred Steenburg' and that her husband was known as 'Fred Steenburg.' The court disposed of the issue of identity as a question of fact, and said: 'It must be said that, in a strict sense or meaning, this was not the name of the witness. A married woman takes her husband's surname, and by a social custom, which so largely prevails that it may be called a general one, she is designated by the use of the Christian name, or names, if he has more than one, of the husband, or the initial letter or letters of such Christian name or names of the husband, together with the appellative abbreviation "Mrs." prefixed to the surname; and all married women (there may be, possibly, a few exceptions) are better known by such name than their own Christian name or names, used with their husband's surname, and their identification would be more perfect and complete by the use of the former method than the latter.'"

Under the above statute it becomes the duty of the recorder to properly index a deed and unless he does

that he becomes personally liable for neglect or refusal to do his duty. In regard to such question the Court in the case of Emerson-Brantingham Implement Co. v. Rogers, 216 S. W. 994, 995, held:

> "* * * The other line of cases has its origin in Bishop v. Schneider, 46 Mo. 472, 2 Am. Rep.533, where the court refused to extend this doctrine to the failure of the recorder to properly index recorded conveyances, a duty imposed on him by section 10384, and held that a deed properly filed and copied in the records imparts notice of its contents notwithstanding the failure of the recorder to index it. The court there said:
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> 'The grantee has no control over the official acts of the recorder, and when he has delivered to the officer his deed, he has performed all the duty within his power; and when the deed is copied on the record, the statute says it shallbe considered as recorded from the time it was delivered. The subsequent sections are distinct and independent provisions respecting indexing, and do not form a part of the law as to recording. They impose a duty on the officer, and denounce a liability for a neglect or refusal to obey that duty, but they do not make what has previously been done void.'
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> "It is pointed out that the statute that makes a record of a conveyance impart notice requires that the instrument be copied on the record and that the indexing of such record is imposed by another section of the section and is not essential to the validity of such notice. * * *"

CONCLUSION.

Therefore, it is clearly the duty of the recorder to index a deed in the names of the grantees as such names appear in the instrument.

Respectfully submitted

S. V. MEDLING
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

SVM:LeC