

IN RE:

RECORDER OF DEEDS:—Recordability of instruments subordinating lien of deed of trust to easement.

April 13th, 1933

FILED

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Hon. Thomas A. Matthews,
Prosecuting Attorney,
Farmington, Missouri.

Dear Mr. Matthews:—

I am in receipt of an instrument entitled "Subordination of Lien of Deed of Trust" wherein the Phoenix Joint Stock Land Bank of Kansas City purports to subordinate its lien on certain real property in St. Francis County to an easement granted to Frank Sullivan and assigns on this same property. The Honorable Raymond Roberts has referred this matter to this office and requested that an opinion be rendered to you as to whether or not this instrument is subject to recording.

No suggestion has come to us of any reason why it should not be recorded. It would appear that it is an instrument undoubtedly entitled to be recorded under Section 11543, the pertinent parts of which read as follows:

"It shall be the duty of recorders to record:
First, all deeds, mortgages, conveyances, deeds of trust, bonds covenants, defeasances, and other instruments of writing, of or concerning any lands and tenements which shall be proved and acknowledged according to law, * * *."

There is no question but that this is an instrument in writing of and concerning land. The acknowledgement is apparently in proper form substantially following the requirements of Section 3029, R. S. Mo. 1929. It seems that the duty of the recorder in examining instruments offered to be recorded, is to examine the acknowledgement and if the acknowledgement is in proper form it is subject to be recorded. It is interesting to note that upon the recorder's failure to receive any paper writing properly acknowledged he shall be subject to damage to any person injured thereby. This is covered by Section 11564, the pertinent parts of which read as follows:

"LIABILITY OF RECORDER FOR NEGLECT OF DUTY.— If any recorder to whom any deed or other writing, proved or acknowledged according to law shall be delivered for record; first, neglect or refuse to make any entry thereof, or to give a receipt therefor, as required by Section 11546; or, second, neglect or refuse to record such deed or other writing within a reasonable time after receiving

*See additional
to this on May 15-1933
attached*

April 19th, 1933

the same; * * *he shall pay to the party aggrieved double the damages which may be occasioned thereby, to be recovered by civil action on the official bond of the recorder."

Accordingly, while civil liability is placed on a recorder of deeds for refusing to receive and record any paper writing acknowledged or proved according to law which may be considered of or concerning real property, yet no liability is placed on him or his bondsmen by this section for erroneously recording in good faith an instrument which might not be, strictly speaking, subject to be recorded.

If there is some special question respecting this instrument which the foregoing does not cover, I shall be glad to hear from you further.

Yours very truly,

HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

HGW/mh