

RECORDER OF DEEDS: Statute requiring Recorder to hold deeds for one year applies only to those both signed and acknowledged more than one year prior to filing.

8-27
August 22, 1935.



Mr. Forrest Smith,
Circuit Clerk and Ex-officio Recorder,
Unionville, Missouri.

Dear Sir:

We acknowledge receipt of your inquiry which is as follows:

"Sec. 11559 R. S. Mo. 1929 provides 'whenever the recorder of deeds.... shall record any instrument...affecting real estate, which purports to have been signed and acknowledged more than 12 months prior to the time the same is presented for record, he shall retain such instrument....for one year.'

"In the event a deed or other instrument is dated more than twelve months previous to the time it is presented for recording, but acknowledged within twelve months of such presentment should I hold the same in my office, subject to the inspection of interested parties, for one year?

"May I call your attention to the fact that in the ordinary form of acknowledgment to deeds there is nothing to indicate when the deed is signed. The form says that on a date named, which of course cannot be subsequent to the date of the acknowledgment, the party or parties acknowledge that he or they acknowledge the execution of the same to be their free act and deed.

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"At present I have under consideration an instrument dated in December, 1933, but acknowledged in 1935. I have no way of knowing whether the parties signed it in 1933 when it is dated, or whether it was signed when acknowledged in 1935. It is doubtful if any acknowledgment is required to lend validity to a deed, but of course is necessary for other reasons and to entitle it to be recorded.

"Your opinion as to what I should do in such cases will be appreciated."

Replying thereto, Section 11559, R. S. Mo. 1929, is as follows:

"Whenever the recorder of deeds, or any other person acting as recorder of deeds, in any county in this state, shall record any instrument of writing affecting real estate, which purports to have been signed and acknowledged more than twelve months prior to the time the same is presented for record, he shall retain such instrument of writing in his office, subject to the inspection of all parties interested, for one year next succeeding the time such instrument shall be recorded: Provided, that if any such instrument of writing shall affect real estate in more than one county, then as soon as it shall be recorded in the first county in which it may be filed, it shall be sent from county to county in the order named in the instrument of writing, by the respective recorders thereof, until it shall have been filed and recorded in each county in which any such real estate may be situated, and retained in the office of the recorder of the county in which it shall be last recorded until the expiration of one year after the last filing thereof: Provided that the recorders shall not be required to

transmit such deed from county to county unless the party desiring the same recorded in such other county or counties shall first pay the recorder's fee, to be transmitted with the deed."

It will be noted that this statute contemplates dealing with the recording and control of a certain class of deed, to-wit, such as "purports to have been signed and acknowledged more than twelve months prior to the time the same is presented for record." The statute appears to not apply to deeds that fail to come within the above class. The officer is not required at all hazards to ascertain in truth and in fact when the deed was signed and when it was executed. We do not find where this particular section of the statute has been construed by the courts, but the meaning of it largely turns on the effect and meaning of the word "purport".

In the case of State v. Chinn, 142 Mo. 507, 1. c. 512, the Supreme Court of this state says:

"What significance then is to be attached to the word 'purport?' In the case of Fogg v. State, 9 Yerg. (Tenn.) 392, the court, quoting from Buller, J., in Gilchrist's case, 2 Leach, 753, said: 'Old cases have given rise to much learning and argument on the words "purport" and "tenor" and the books are full of distinctions as to the meaning of these words, and the necessity of using the one or the other of them in indictments where instruments are to be stated, but in the many cases upon the subject I can find no judicial determination that the purport and the tenor should both be stated in any case whatever. Purport means the substance of an instrument as it appears on the face of it to every eye that reads it, and tenor means an exact copy of it; and therefore, where the instrument is stated according to its tenor, the purport of it must necessarily appear.' 19 Am. and Eng. Ency. of Law, 590; 2 Russell on Crimes (1896 Ed.), 646; Fogg v. State, 9 Yerg. (Tenn.) 392."

In Words and Phrases, Vol. 7, p. 5864, it is said:

"The word 'purport,' as used in speaking of the purport of an instrument, means the substance thereof as it appears on the face thereof to every eye that reads it. *Dana v. State*, 2 Ohio St. 91, 93.

"Purport imports what appears on the face of the instrument. *McClellan v. State*, 32 Ark. 609, 611. It is usually intended to express the substance and effect as appears from the face of the instrument, in distinction from 'tenor,' which means a copy or exactness. *State v. Callendine*, 8 Iowa, 288, 296."

The date that a deed bears is only persuasive or suggestive proof of the life of the instrument. As between the parties and others having notice, the deed becomes effective upon delivery thereof. The acknowledgment is important with respect to the question of constructive notice. It must be acknowledged before it may be placed of record by the recorder. The acknowledgment is taken solemnly before an officer authorized by law so to take, and usually is before a notary public, who has an official bond for the protection of the public against his misconduct. The statute does not say "which purports to have been signed or acknowledged," but it says "which purports to have been signed and acknowledged."

Conclusion

We are of the opinion that the statute is directed at deeds which on the face thereof appear to be both signed and acknowledged more than one year prior to the filing thereof,

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and that if they do so appear, then the recorder should hold them for one year, and that otherwise he is not required by the statute to hold them for one year.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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