

Recording Documents, Manner Of. Photography, Recording By.

Under the provisions of Section 3032 Revised Codes, the county clerk is required to record documents in a well bound book and in a fair hand, and under the particular wording of this statute the photographic method of recording instruments cannot be used in this state.

August 23, 1911.

Board of County Commissioners,
Missoula, Montana.

Gentlemen:

I am in receipt of your letter of the 19th inst., signed by the clerk of your board, and also a similar request from the board of county commissioners of Cascade county, asking my official opinion as to whether or not it would be lawful for the county clerk and recorder to use photographic copies of documents and file the same in a loose leaf made for that purpose, in recording such instruments as are required to be recorded in that office.

In reply I will say that by the provisions of Sec. 3031, Revised Codes, the county clerk is ex-officio recorder, and must procure such books for records as the business of his office requires. Section 3032 requires him, upon the payment of his fees for the same, to record, separately, in large and well bound separate books in a fair hand, the documents required to be recorded.

It will be noticed that by our statute he is required to record the document in a "well bound" book, and in a "fair hand." The question to be determined is whether or not photographing a document on a separate sheet, and then filing or binding this photograph in a loose-leaf book would be a compliance with the statute.

The verb "record" is defined by the standard dictionary to mean: "To write or inscribe an authentic account of;" and by Webster: "To preserve the memory of, by committing to writing, to printing, to inscription, or the like; to make note of; to write or enter in a book or on parchment, for the purpose of preserving authentic evidence of; to register; to enroll." Photographic records might possibly meet these definitions, but the statute goes further, and requires the recording to be done in a "fairhand." It does not appear to me that photographing a document could be construed as recording in a fair hand. The original instrument might be almost unintelligible, yet it would be entitled to record, and the recording must be done in a legible manner. In the next place, the statute requires the recording to be done in a "well bound" book. A loose leaf book certainly would not comply with this provision. It is true that when a book of photographs is completed, it might be bound into an inseparable volume, but still the recording would not be in a well bound book until the volume was completed and bound. This was not the intention of the framers of this statute. The statute plainly says that the recording shall be done in a fair hand and in a well bound book.

Our Section 3032, above referred to, was taken from the California Code of 1872. The California law remained the same until 1905, when it was amended so as to read as follows: "He (the recorder) must, upon the payment of his fees for the same, record separately, in a fair hand or typewriting, in large and well bound separate books, either sewed books or an inseparable leaf, which when placed in the book cannot be removed," the instruments mentioned in the section.

I have not been able to find any case construing our section or the California section from which it was taken, as to how the recording must be done, or a decision construing a statute of any other state in any wise similar to our own, but the California legislature evidently deemed it necessary to amend their section to include recording by typewriting, and in order to use in the act of recording a separate sheet to be afterwards bound into a book from which it could not be removed.

"It is needful in the construction of all instruments to read them in view of the surrounding facts. To understand their purport and intended application, one should, as far as possible, be placed in a situation to see the subject from the makers standpoint, and study his language with that outlook. Statutes are no exception."

Sutherland on Statutory Construction (2nd Ed) Sec. 471.

At the time of the adoption of our statute, this photographic method of recording was unknown, and it cannot be presumed that the legislature had in mind any other method of recording than that in vogue at that time, but regardless of this fact a photograph of an instrument upon a separate sheet of paper and inserted in a loose leaf book, or securely bound therein, cannot be construed as "recording in a well bound book in a fair hand."

This photographic method is such a radical departure from any

method known to the law at the time of the adoption of our statute that in my judgment it will require legislative authority before it can be adopted for recording instruments required by law to be recorded. The purpose of recording is permanency of the record, and the legislature should first determine that the photographic method would insure a permanent record, and enact a law authorizing its use.

You are therefore advised that, under the particular wording of our statute, you cannot use the photographic method of recording and comply with the statute.

Yours very truly,

ALBERT J. GALEN,

Attorney General.