

Opinion No. 408 Answered by Letter
(Stephan)

Opinion No. 22 (1964)

May 26, 1964



Honorable Gerald Kiser
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Mr. Kiser:

This is in response to your request for an opinion of this office, which request reads in part as follows:

"This is to request your opinion concerning recording of certain instruments.

"Attached hereto you will find a copy of a document which has been presented to our Recorder of Deeds to be filed. He has received a number of these. You will note that the second paragraph of this document refers to a note above described.

"Our Recorder is concerned with whether or not the original of this note should be presented to him for comparison and identification at the time the document is recorded. It should be noted, that in addition to what appears on the document sent to you, a legal description of the property is usually taped to the document."

The sample agreement attached to your letter is set out below:

Honorable Gerald Kiser

"AGREEMENT

"In consideration of the extension of credit as evidenced by a note for \$622.97 of even date herewith, given by the undersigned payable to Your Bank of Kansas City, Mo. representing cost of improvements to the following described property in Clay County, state of Mo.

The undersigned agree that they will not sell or convey said property without first paying the balance of said loan in full, and that said property and their interest therein, shall stand as security for the enforcement of this Agreement.

"This agreement shall enure to the benefit of any subsequent owner and holder of the note above described.

"IN WITNESS WHEREOF, the undersigned have set their hands this 31st day of September 1963.

John Roe

Mary Roe

"STATE OF MISSOURI
COUNTY OF CLAY

"Be it remembered that on this day Sept. 31 A. D., 1963, before the undersigned, a notary public, in and for the said county and state aforesaid came John Roe and Mary Roe who are personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged that they executed the same as their free act and deed.

Honorable Gerald Kiser

"IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.

Harry Doe
Notary Public"

In the premises we believe that this situation is provided for by Section 443.050, 1963 Cum. Supp., which reads in part as follows:

"1. In all cities in this state which now have or may hereafter have six hundred thousand inhabitants or more, and in all counties of class one and two, when any mortgage or deed of trust or other instrument intended to create a lien upon real estate to secure the payment of a debt or obligation evidenced by an instrument or instruments in writing, shall be filed for record, the instrument or instruments representing the principal of such debt or obligation or any part thereof shall be presented to the recorder of deeds at the time of such filing for record, or in case the mortgage or deed of trust or other instrument is to be filed in more than one county, then to the recorder of the county where first filed, and the recorder shall, for the compensation of twenty-five cents for each of the first four of such instruments identified by him and ten cents for each additional instrument identified by him, stamp or write upon each such instrument evidencing principal so secured an identification thereof as being a note, bond or other evidence of debt described by such mortgage, deed of trust or other instrument of security."

Since Clay County is a county of the second class, the foregoing would seem to require recording "the instrument . . . representing the principal of such debt or obligation . . ." if the "agreement" set out above may be characterized as "any mortgage or deed of trust or other instrument intended to create a lien upon real estate to secure the payment of a debt or obligation. . . ."

Honorable Gerald Kiser

Without deciding whether the sample agreement set out above does in fact create a lien upon the real estate in question, we are of the opinion that the agreement is clearly "intended to create" such an encumbrance.

Therefore, your question as to whether the original note should be presented to the recorder at the time that the agreement is presented for recording is answered in the affirmative.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

AJS:lt