

June 8, 1970 (OPINION)

Mr. Orrin B. Lovell

State's Attorney

Golden Valley County

RE: Judgments - Register of Deeds - Recording Partial Judgment

This is in response to your letter in which you enclosed a copy of the Attorney General's opinion dated April 5, 1955, and a copy of the stamp which is ordinarily used by the register of deeds, which you believe is more or less commonly used throughout the State of North Dakota. You then state the following:

The Register of Deeds received a certified copy of a judgment and decree in distribution out of the Burleigh County Court. The judgment and decree was extensive covering some twenty-six pages. Request was made to the Golden Valley County Register of Deeds that the decree be recorded only insofar as it affects title to the Golden Valley County land.

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The problem comes up in certification. Section 11-18-11 requires certification 'that the instrument was filed in his office.' I do not see how the Register of Deeds can certify that an instrument was filed or recorded when in fact the instrument was only partially filed or recorded regardless of the fact that some of it may not affect property located within the county."

You then ask:

1. Is the Attorney General's opinion still the same relative to instruments other than those affecting oil and gas leases or releases?
2. If the Register of Deeds is to determine what descriptions affect property within or without the county, then what sort of certification does the Register of Deeds use in setting up a document number and stamping the instrument?"

As stated in your letter, section 11-18-11 of the North Dakota Century Code does specifically provide that the register of deeds, after recording the instrument shall make a certificate that the instrument was filed in his office and give the date and hour of filing. This certificate is to be placed upon the instrument reciting that the instrument was filed in his office and giving the date and hour of filing, and a document number. The objectives of doing this is to inform any individual looking at the instrument that same has been recorded with the register of deeds in the proper place.

The opinion of April 5, 1955, concludes that the register of deeds is not required to record the entire judgment but only that portion pertaining to real estate located in the county where the instrument is presented for recording, and to charge accordingly.

We can envision situations where small parcels of properties are located in various counties and the filing fees for the recording of the entire instrument, if the instrument is lengthy, could become extremely costly for the individual concerned. However, this could be remedied at the source where the Court could enter separate decrees or judgments, but we see no real reason why this is necessary.

The purpose and objective to be accomplished by the recording of instruments should be examined. There is little doubt that the main purpose and objective of filing an instrument is to put the whole World on notice that certain property has been affected, either by a judgment decree or some other legal proceedings, including but not limited to LIS PENDENS. It would appear that an entry showing that certain property is affected as a result of some legal process would accomplish this. The individual who receives notice by looking at the records of the register of deeds would be in a position to check out definitely where the instrument was issued and is on file, and what is contained in the instrument. The same would hold true for an abstractor.

The term "instrument" as found in section 11-18-11 can be construed to mean that portion of the instrument which relates to property located in the county. It can be an excerpt. The term "instrument" does not necessarily embrace every item stated therein, except as it may be pertinent. Thus, all items contained in the instrument which affect real property located within the county must be recorded. In this respect the term "instrument" does not necessarily embrace the entire instrument but can refer to only that portion which relates to real property located in the county.

Thus, in direct response to your first question, the opinion dated April 5, 1955, would have application to instruments which affect real property other than those arising out of oil and gas leases or similar transactions.

In direct response to your second question, the register of deeds can number the document in accordance with the statutory provisions and stamp such number on the document, but he does not certify that the entire instrument was recorded. The register of deeds could use a stamp or could write on the instrument that only certain portions thereof were recorded. For example, he could state that certain portions were recorded which contained his initials, or he could specify the paragraph and page which was recorded.

In this respect we consider the language of section 11-18-11 as being directory and not mandatory as pertinent to the term "instrument", but only in the sense that it does not require that the entire document be recorded and that the certification does not have to say that the entire instrument be recorded.

This obviously raises the question, who shall decide what portion of

the document should be recorded refers to real property located in more than one county? Obviously this duty or responsibility should not be imposed upon the register of deeds. If the register of deeds will follow the directions of the person wishing the instrument to be recorded, he will have satisfied his responsibility. The register of deeds, however, in certifying that a portion of an instrument has been recorded should indicate on his certificate that the instrument also referred to properties located in a county other than the one in which the instrument is being recorded.

By following the suggested procedure, the purpose and objective of the recording statutes will have been satisfied. Anyone checking into any specific property will be alerted that a certain document exists which affects or may affect the specific property. It becomes incumbent upon such individual to determine the legal affect such instrument has on the property.

HELGI JOHANNESON

Attorney General