

S T A T E O F T E N N E S S E E

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Opinion No. 02-105

Register of Deeds' Legal Liability For Not Recording A Deed

QUESTION

Whether a county register of deeds is legally required to record a deed of land for a road right-of-way that has not been approved by the County Executive and the County Superintendent of Highways.

OPINION

If the county register of deeds determines that the deed is entitled to registration under Tennessee law, he should record the deed even if it has not been approved by the County Executive and County Superintendent of Highways. The register of deeds may be held legally liable for failing to record a deed of land entitled to registration under Tennessee law promptly and correctly.

ANALYSIS

This opinion request concerns a county register of deeds' liability for refusing to record a deed that meets all the requirements of state law but has not been approved by certain county officials. Specifically, the issue is whether or not a county register of deeds is legally liable if the register does not record a deed of land for road right-of-way that has not been approved by the County Executive and the County Superintendent of Highways.

The General Assembly has charged the county register of deeds with the responsibility of determining whether or not each instrument offered for registration is entitled to registration under the laws of this state. Tenn.Code Ann. § 8-13-108(a)(1) (2001). The statute outlines several additional duties the register must fulfill once he accepts the instrument for registration including, but not limited to: (1) noting on the instrument the time the register actually received the instrument; (2) keeping a notebook containing information regarding all instruments registered; (3) entering the required information into the appropriate notebook in the order of time of reception as nearly as practicable, without undue delay; (4) recording or filing the instrument in the appropriate book or record series; (5) certifying the fact of registration upon each instrument registered; (6) carefully preserving as permanent records the recorded copies of all deeds, deeds of trust and other instruments affecting interests in real estate; (7) exhibiting the notebooks and instruments registered to all persons wishing to inspect them. Tenn. Code Ann. §§ 8-13-108(a) (2) - (8) (2001).

Under Tennessee law, the county register of deeds may be held personally liable for damages if he fails to fulfill the duties imposed on him by law. Before the county register of deeds can assume his responsibilities, he is required to furnish a surety bond ensuring the faithful performance of his duties. Tenn. Code Ann. § 8-13-102(a) (1998). Moreover, Tenn. Code Ann. § 8-13-110 provides that, upon failure to perform any official duties, the register of deeds may be indicted for a Class C misdemeanor and the register and the register's sureties shall be civilly responsible to any person injured by the failure. Tenn. Code Ann. § 8-13-110 (1989).

Additionally, the Tennessee Supreme Court has held that:

The failure to promptly and correctly register deeds and other instruments, if tolerated, would defeat the very object and purpose of our registration laws. Public policy and the rights of those directly interested in the proper registration of instruments require that registers be held to strict and literal performance of their official duties. They and their official sureties undertake and contract that the duties of the office will be honestly, diligently, and correctly performed, and when their obligation is breached, and injury follows, they are liable to the party injured.

State v. McClellan, 113 Tenn. 616, 85 S.W. 267, 269 (1905).

The Tennessee Supreme Court has held that where there are specific statutory provisions that conflict with the general provisions, the more specific provisions will generally will be given effect over conflicting general provisions. *Keefe v. Atkins*, 199 Tenn. 183, 193, 285 S.W.2d 338, 342 (1955); *Brewer v. Lincoln Brass Works, Inc.*, 991 S.W. 2d 226, 229-230 (Tenn. 1999); *Patterson v. Tennessee Department of Labor and Workforce Development*, 60 S.W.3d 60, 64 (Tenn. 2001). Accordingly, unless there is a specific statute that provides an exception to the requirement that the register of deeds register all deeds entitled to registration under the laws of the state promptly and correctly, the register of deeds must file the deed.

For example, this office has previously opined that the specific rules with respect to the county register of deeds recording certain subdivision plats set forth in Tenn. Code Ann. § 13-3-402 take precedence over the general rules for county registers set forth in Tenn. Code Ann. § 8-13-108(a) and remove that particular function from the general duty to enter in the book all deeds and other instruments left to be registered. Op. Tenn. Atty. Gen. No. 90-87 (September 19, 1990). Tenn. Code Ann. § 13-3-402 (a)(1) only applies to subdivision plats which are not located within the boundaries of any municipal corporation:

- (1) in regions that have a regional planning commission as defined and created by the department of economic and community development;

(2) where the regional planning commission has:

(a) adopted a regional plan which includes at least a major road plan;

or

(b) has progressed in its planning to the state of making and adoption of a major road plan

and

has filed a certified copy of such major road plan in the office(s) of the county register(s) in the county or counties lying in whole or in part in such region.

[If the plat of subdivision divides the tract into no more than two(2) lots, the approval may be endorsed in writing on the plat by the secretary of the commission without the approval of the regional planning commission, upon certification by the planning staff of the regional planning commission that the subdivision complies with such regulations governing a subdivision of land as have been adopted by the regional planning commission pursuant to § 13-3-403.]

Tenn. Code Ann. § 13-3-402 (a)(1) (1989).

Where these criteria are met, the statute makes it a misdemeanor for county registers to receive, file or record a plat of a subdivision lacking the approval of the regional planning commission and such approval must be endorsed in writing on the plat by the secretary of the commission. Tenn. Code Ann. § 13-3-402(c) (1989).

An extensive review of the statutes and case law revealed no statutes requiring the approval of the County Executive or County Superintendent of Highways prior to recordation of a deed of land for a road right of way or specifically prohibiting or preventing the register of deeds from recording such a deed on the ground that it has not been approved by the County Executive or County Superintendent of Highways. Accordingly, the register of deeds should record any deed offered for and entitled to registration under the laws of the state even if the deed of land for a road right-of-way has not been approved by the County Executive or the County Superintendent of Highways. The county register of deeds' failure to record the deed could result in exposure of the

register of deeds to legal liability for damages to a party injured by the failure to record the deed.

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