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SPRINGFIELD

**April 7, 1978**

**FILE NO. S-1350**

**OFFICERS:**  
**Duty of the Recorder of**  
**Deeds Under the Plat Act**

**Honorable Robert J. Renkes**  
**State's Attorney**  
**Whiteside County**  
**Courthouse**  
**Morrison, Illinois 61270**

**Dear Mr. Renkes:**

**I have your letter wherein you ask the following questions:**

- 1. In what circumstances, if any, may or should the county recorder of deeds decline to record deeds and leases? Where a document is not irregular on its face, to what extent should the recorder scrutinize that document prior to recordation?**
- 2. May the recorder decline to record even after he has requested, and received, an affidavit pursuant to paragraph 5a of the Plat Act? (Ill. Rev. Stat. 1975, ch. 109, par. 5a.)**

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3. If the recorder of deeds does have the power to investigate deeds and leases, not irregular on their face, and may not decline to record deeds or leases even where an affidavit has been supplied in compliance with section 5a of the Plat Act, what are the appropriate remedies against a recorder who improperly refuses to record a document, and what would the liability of the recorder be in such a case?

You are concerned specifically with the recordation of documents in which the recording party claims to come within one of the exemptions listed in paragraph 1(b) of "AN ACT to revise the law in relation to plats" [hereinafter the Plat Act]. Ill. Rev. Stat. 1975, ch. 109, par. 1(b).

In response to your first question, it is my opinion that the duties of the recorder as set forth in section 5a of the Plat Act (Ill. Rev. Stat. 1975, ch. 109, par. 5a), are ministerial, and therefore, he has no discretion to refuse to record a deed or a lease which is regular on its face. Section 5a of the Act provides as follows:

"Recorder of Deeds or the Registrar of Title of any County shall not record deeds or leases which attempt to convey property contrary to the provisions of this Act. In case of doubt, the Recorder of Deeds or the Registrar of Title of any County may require the person presenting such deed or lease to give evidence of the legality of a conveyance by an affidavit as to the facts which exempt such conveyance from the provisions of this Act."

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The question you have posed turns on whether the acts which the recorder is required to perform under section 5a are ministerial.

An action which is absolute, certain and imperative, which involves the execution of a set task and which is imposed by a law which prescribes the time, manner and occasion of its performance with such certainty that nothing remains for discretion, is a ministerial one. (Peabody v. Sanitary District (1928), 330 Ill. 250, 257.) Section 5a prohibits the recordation of deeds or leases which attempt to convey property in contravention of the Plat Act. The action to be performed by the recorder is clearly a ministerial one. The recorder has no discretion but is simply prohibited from recording documents which, on their faces, contravene the Act. The task is a set one, and a specific procedure, the provision of an affidavit, is set forth to operate in situations where doubt as to compliance with the Act exists.

Although the powers of the recorder are ministerial, he is not relieved of responsibility to perform the duties of his office, as prescribed by paragraph 5a, in good faith.

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Therefore, he should refuse to record any conveyance of property which, on its face, is in violation of any part of the Plat Act.

In response to your second question, it is my opinion that once an affidavit has been requested and received, the recorder may not refuse to record a deed or a lease presented for recordation. The recorder may, in the good faith exercise of his paragraph 5a duties (Ill. Rev. Stat. 1975, ch. 109, par. 5a), require a person seeking to record a conveyance to make an affidavit showing the facts which exempt a deed or a lease from the provisions of the Plat Act. Because of the ministerial nature of the recorder's duties, however, it appears that, once a proper affidavit has been supplied showing that a conveyance comes within the paragraph 1(b) exceptions (Ill. Rev. Stat. 1975, ch. 109, par. 1(b)), he is not authorized to refuse to record a deed or a lease on the grounds that it is not in compliance with the Act.

When the recorder of deeds is asked to record a document which he feels does not comply with the Plat Act and which is supported by what he believes to be a suspicious affidavit, he should record the document. It is, however,

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his duty to notify the State's Attorney of suspected violations of the Act. Ill. Rev. Stat. 1975, ch. 109, par. 10.

In response to your third question, it is my opinion that a recorder would not be liable for damages resulting from his improper refusal to record a document unless his action can be shown to constitute willful and wanton negligence. Section 2-202 of the Local Governmental and Governmental Employees Tort Immunity Act (Ill. Rev. Stat. 1975, ch. 85, par. 2-202) provides as follows:

"A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton negligence."

A recorder is a public employee for purposes of section 2-202.

(Ill. Rev. Stat. 1975, ch. 85, par. 1-202, 1-206, 1-207.)

Therefore, a recorder is immune from suit in the absence of a showing of willful and wanton negligence. Whether a particular action, such as the improper refusal to record a deed, constitutes willful and wanton negligence is a question of fact.

Very truly yours,

A T T O R N E Y   G E N E R A L