

March 11, 2016

OFFICIAL OPINION 2016-4

Ms. Brandye Hendrickson
Commissioner
Indiana Department of Transportation
100 N. Senate Ave., Room N758
Indianapolis, IN 46204

RE: Payment of County Recording Fees

Dear Commissioner Hendrickson:

You requested from this office an opinion as to whether county recorders may charge the Indiana Department of Transportation (“INDOT”) recording fees for descriptions, deeds, or other conveyance documents filed under Ind. Code § 8-23-7-4, Ind. Code § 8-23-7-31, and Ind. Code § 8-23-23-1.¹

BRIEF ANSWER

County recorders may not charge INDOT a fee for conveyance documents filed pursuant to Ind. Code § 8-23-7-31 and Ind. Code § 8-23-23-1.

ANALYSIS

A. Should INDOT be Charged Fees for “Descriptions” Filed Pursuant to Ind. Code § 8-23-7-4, Ind. Code § 8-23-7-31, or Ind. Code § 8-23-23-1?

INDOT acquires property, rights of way, and easements for a variety of purposes such as building, straightening, or widening highways, removing visual obstructions on highways, and building weigh stations or rest areas. *See* Ind. Code § 8-23-7-2. Ind. Code § 8-23-7-1 *et seq.* provides the procedures INDOT must usually follow when acquiring property. When the property or right is acquired, “a legal description of all rights-of-ways and easements, including the area of the land acquired, shall be filed by the department [INDOT] in the office of the recorder in the county in which the real property is located.” Ind. Code § 8-23-7-31(a).²

A conflict exists between Indiana Code § 36-2-7-10(h) on the one hand, and Ind. Code § 36-2-7-10(g),³ Ind. Code § 8-23-7-31(a), and Ind. Code § 8-23-23-1 on the other over whether fees may be charged when INDOT files documents pursuant to Ind. Code § 8-23-7-4, Ind. Code § 8-23-7-31(a), and Ind. Code § 8-23-23-1. Ind. Code § 36-2-7-10 establishes fees that county recorders are

¹ We note that this question was the subject of a previous Attorney General Opinion, 1964 *Ind. Att’y Gen. Op.* No. 16. However, that opinion was issued prior to the amendments occasioned by Pub. L. 98-1986, Sec. 10, adding language now found at Ind. Code § 36-2-7-10(h) and discussed *infra*.

² *See also* Ind. Code § 8-23-23-1.

³ What is now Ind. Code § 36-2-7-10(g) was added to the Indiana Code by Pub. L. 98-1986, Sec. 10.

required to charge for the services they provide. Subsection (h) of that statute provides that “[t]he state and its agencies and instrumentalities are required to pay the recording fees and charges that this section provides.” However, Ind. Code § 36-2-7-10(g) states, “The county recorder may not tax or collect any fee for: ... (2) performing any service under any of the following: ... (B) IC 8-23-7. (C) IC 8-23-23.” Additionally, both Ind. Code § 8-23-7-31(a) and Ind. Code § 8-23-23-1 contain provisions prohibiting recorders from charging INDOT, a state agency, fees for recording the descriptions as required under those two statutes.⁴

When construing statutes on the same subject matter, every effort should be made to achieve a harmonious result that gives effect to each statute.⁵ Additionally, if two statutes are irreconcilable but one statute deals with the subject in general terms and the other deals with it in a more specific or detailed manner, “then the more detailed will prevail as to the subject matter it covers.”⁶ Ind. Code § 36-2-7-10(h), Ind. Code § 36-2-7-10(g), Ind. Code § 8-23-7-31(a), and Ind. Code § 8-23-23-1 concern the same subject matter: charging fees for documents filed with the county recorder. The statutes cannot be harmonized. Ind. Code § 36-2-7-10(h) requires state agencies to pay the recording fees while Ind. Code § 36-2-7-10(g), Ind. Code § 8-23-7-31(a) and Ind. Code § 8-23-23-1 all exempt INDOT from paying recording fees. Ind. Code § 36-2-7-10(h) is general in nature, applying to all state agencies and instrumentalities. Ind. Code § 36-2-7-10(g), Ind. Code § 8-23-7-31(a) and Ind. Code § 8-23-23-1 deal with the subject in a specific manner, applying only to certain types of filings made by INDOT. Therefore, the fee prohibitions under Ind. Code § 36-2-7-10(g), Ind. Code § 8-23-7-31(a) and Ind. Code § 8-23-23-1 apply when determining recording fees for descriptions filed under Ind. Code § 8-23-7-4, Ind. Code § 8-23-7-31(a) and Ind. Code § 8-23-23-1.

B. Do the “Descriptions” Filed Under Ind. Code § 8-23-7-31(a) and Ind. Code § 8-23-23-1 Include Deeds and Other Conveyance Documents?

Descriptions filed by INDOT under Ind. Code § 8-23-7-31(a) or Ind. Code § 8-23-23-1 are often in the form of a deed with an attached property description. This raises the question as to whether deeds filed by INDOT are equivalent to the “descriptions” in Ind. Code § 8-23-7-31(a) or Ind. Code § 8-23-23-1. It is a long-standing rule of statutory construction that a court should first look to the plain and ordinary meaning of a statute’s words or phrases and use that meaning unless it is absurd, ambiguous, or would defeat the legislative purpose.⁷ The phrase that needs to be construed in Ind. Code § 8-23-7-31(a) is “a legal description of all rights-of-way and easements, including the area of the land acquired[.]” The language of Ind. Code § 8-23-23-1 is similar but it only concerns rights-of-way and easements. The key word in both statutes is “description.” The

⁴ Ind. Code § 8-23-7-31(a) (“No fee may be charged for filing and recording the description.”); Ind. Code § 8-23-23-1 (“The county recorder may not charge a fee for filing and recording the description.”).

⁵ See *Ind. Alcoholic Beverage Comm’n v. Osco Drug, Inc.*, 431 N.E.2d 823, 833 (Ind. Ct. App. 1982).

⁶ *Id.*

⁷ See, e.g., *Green v. Cheek*, 5 Ind. 105, 107 (Ind. 1854) (“Courts may give a sensible and reasonable interpretation to legislative expressions which are obscure; but where the language is explicit, leading to no absurd results, they must be governed by the obvious meaning and import of the terms used in the enactment.”); *Anderson v. Gaudin*, 42 N.E.3d 82, 85 (Ind. 2015) (“When a statute is clear and unambiguous, we apply words and phrases in their plain, ordinary, and usual sense.”). See also Ind. Code § 1-1-4-1(1).

question is whether “description” is intended to be used in its plain and ordinary meaning or whether this is a “description of real property” which has a specific meaning

The meaning of “description” used in Ind. Code § 8-23-7-31(a) and Ind. Code § 8-23-23-1 cannot be the mere description of real property. The phrase “description of real property” means “[a] statement of the boundaries by monuments, courses, distances and quantity or by reference to maps, plats, or surveys.”⁸ The description of real property provides the means of identifying the land at issue in a real property transaction.⁹ It does not in itself describe what type of transaction is taking place. The descriptions in Ind. Code § 8-23-7-31(a) and Ind. Code § 8-23-23-1 need to identify the transaction, specifically, whether the transaction was a grant of a right-of-way or an easement or the acquisition of property. The only document which would clearly describe the transaction is the conveyance document. The conveyance document can be in the form of a deed, but it can also be in the form of a judgment in an eminent domain case. Therefore, all conveyance documents, including deeds, filed by INDOT pursuant to Ind. Code § 8-23-7-31(a) and Ind. Code § 8-23-23-1 would be exempt from the payment of recording fees.

C. What would constitute a description for the purposes of Ind. Code § 8-23-7-4?

Ind. Code § 8-23-7-4 contains language that would indicate that the meaning of “description” in that section refers to a real property description. Specifically, Ind. Code § 8-23-7-4 refers to “metes and bounds,” which is a term used for a type of real property description. Nevertheless, the “description” in this case would need to include some contextual language as to why the description was prepared and filed. When construing a statute, courts strive to “determine and give effect to the intent of the legislature.”¹⁰ Additionally, “the legislative intent as ascertained from the whole prevails over the strict, literal meaning of any word or term used therein.”¹¹ In other words, courts will look over the whole statute rather than the meaning of one specific word. Looking at Ind. Code Chpt. 8-23-7, which lays out the process that INDOT uses to acquire property, there appears to be an intent that the process be transparent since it includes notices to parties and publication of information on the land and purchase price.

Merely filing a description of real property would not achieve the intended purpose of Ind. Code § 8-23-7-4. Filing a property description without context as to what it is would not put anyone on notice that INDOT intends to acquire the property. Filing only a property description with the county recorder would not serve any purpose at all since no one researching the title to the property would know why it was filed. Including with the property description language that at the very least states the description is being filed pursuant to Ind. Code § 8-23-7-4 would put people doing title research on notice that INDOT intends to acquire the property, possibly preventing owners who disregard their individual notice from INDOT from violating the restrictions that are placed on the land under Ind. Code § 8-23-7-6 and Ind. Code § 8-23-7-8. Therefore, since contextual language is needed in order to accomplish the legislative intent of Ind. Code § 8-23-7-4, and since county recorders, under Ind. Code § 36-2-7-10(g), may not charge a fee for services rendered under

⁸ *Ballentine’s Law Dictionary* 341 (3d ed. 1969).

⁹ *Schuler v. Graf*, 862 N.E.2d 708, 713 (Ind. Ct. App. 2007).

¹⁰ *Cooper Indus., LLC v. City of South Bend*, 899 N.E.2d 1274, 1283 (Ind. 2009).

¹¹ *B.K.C. v. Indiana*, 781 N.E.2d 1157, 1167 (Ind. Ct. App. 2003).

Ind. Code Chpt. 8-23-7, contextual language filed by INDOT with a property description under Ind. Code § 8-23-7-4 cannot result in a fee-charge by county recorders.

CONCLUSION

It is our opinion that the specific fee prohibition in Ind. Code § 8-23-7-31(a), Ind. Code § 8-23-23-1, and Ind. Code § 36-2-7-10(g) would apply instead of the general recording fee provision at Ind. Code § 36-2-7-10(h). Additionally, we find that conveyance documents would be included within the concept of “description” as employed in Ind. Code § 8-23-7-31(a) and Ind. Code § 8-23-23-1, and that contextual language with property descriptions would be considered necessary to effectuate the purpose of Ind. Code § 8-23-7-4. Therefore, INDOT is exempt from paying recording fees where it records documents under Ind. Code § 8-23-7-4, Ind. Code § 8-23-7-31(a) and Ind. Code § 8-23-23-1.

Sincerely,

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