tution of our nature, for it has authoritatively been declared that a man cannot serve two masters, and is recognized and enforced wherever a well regulated system of jurisprudence prevails". (Our emphasis)

Therefore, it is my opinion that a member of a county board of public welfare, being the holder of a lucrative office, cannot be in a position where he can receive profit or money through a contract entered into by the board of county commissioners, with a firm of which he is a member.

OFFICIAL OPINION NO. 22

March 20, 1958

Mr. T. M. Hindman
State Examiner
State Board of Accounts
304 State House
Indianapolis 4, Indiana

Dear Mr. Hindman:

In your letter of February 5, 1958, to this office you have raised problems concerning record researches and fees to be charged by county recorders. The portion of the statute set forth in your letter and your questions are as follows:

"Chapter 174, Acts of 1949, Burns 49-1308, contains the following provisions with reference to fees to be charged for services required under the Chattel Mortgage Act:

"'For filing and entering each instrument or copy including any assignments endorsed thereon and issuing a receipt for same, fifty cents (50¢); for attesting a marginal assignment or release, twenty cents (20¢); for searching for chattel mortgages, pledges, incumbrances, releases, assignments and subordinations and certifying to such search, the sum of ten cents (10¢) for each name searched against for each year covered by the search; for certified copies
of each instrument where copy to be certified is prepared by the person requesting certification, ten cents (10¢); for certified copies of each instrument where the copy to be certified is not so furnished, twenty-five cents (25¢); and in addition ten cents (10¢) for each one hundred (100) words copied after the first five hundred (500) words.'

* * *

"We, therefore, request your official opinion on the following questions:

"1. Does the statute quoted herein, or any other statute, impose a duty upon the recorder to make a search of his official records, at the request of any party, for chattel mortgages, pledges, incumbrances, releases, assignments and subordinations, and to certify the results of such search? If not a duty, would he be authorized to make and certify to such search?

"2. If your answer to either part of question 1 is in the affirmative, would such requirement or authority extend to other official records in the county recorder's office, such as deed records, real estate mortgages, etc.?

"3. If required or authorized to make and certify to any search, under either 1 or 2 above, what fees should be charged by the recorder for his services?

"4. In the event a party submits an instrument for recording in duplicate, with the request that the recorder place his file stamp on both copies showing that the instrument was received for record over the printed name or facsimile signature of the county recorder, would the affixing of such stamp on the duplicate copy be considered as a 'certificate,' thus requiring payment of the fees provided by law for the furnishing of certified copies?

"5. Are the fees provided in Burns' 49-1308 for certified copies of instruments under the Chattel Mortgage Act, still in full force and effect, or are such fees now governed by Chapter 81, Acts of 1957?"
The duties of the county recorder are prescribed by statute and nowhere is there found, in the statutes, any expressed affirmative duty upon the recorder to search his records at the request of any party. Acts of 1895, Ch. 145, Sec. 117, as amended, and as found in Burns' (1951 Repl.), Section 49-1308, is the only place wherein mention is made of a search by the recorder, and reads in part as follows:

"... for searching for chattel mortgages, pledges, incumbrances, releases, assignments and subordinations and certifying to such search, the sum of ten cents [10¢] for each name searched against for each year covered by the search; * * *."

The above section sets out the various fees which the recorder shall charge and it is to be noted that the portion of the act referring to a search deals solely with the chattel mortgage records and not the real estate records. Reference is made to the fee chargeable for such a search but in the plain meaning of the statute no affirmative duty is placed upon the recorder to search either the real estate or chattel mortgage records.

An early Indiana Supreme Court case dealt with the problem as it applies to real estate mortgages. This case, The Mechanics Building Assn. v. Whitacre (1883), 92 Ind. 547, was decided prior to the Burns' (1951 Repl.), Section 49-1308, supra, but it has never been overruled and it seems logical to say that it would still have general application upon the subject of mandatory record searches by a county recorder. The recorder, Whitacre, erroneously recorded a mortgage satisfaction and the plaintiff became injured thereby. In deciding that the recorder was not under a duty to search his records the court said at page 550:

"Upon the last proposition we think the appellee is right. We know of no law, nor has the counsel for the appellant referred us to any, that makes it the duty of the recorder to search the records and certify to the conditions of titles. If, for a consideration, he undertook to search the records and certify to titles, and whether certain real estate was encumbered or not, he would be liable upon such undertaking just as would
any other person; he would be liable to the party who employed him, but not to such as might simply see and rely upon such certificate. Savings Bank v. Ward, 100 U. S. 195."

It is well to point out that even in those states having a statute which places an expressed affirmative duty upon the recorder to search his records the courts normally hold that this does not make him an abstractor and he need only search those records to which his attention is called.


In view of the foregoing I must conclude that the answer to your first question is that a recorder is under no legal duty to search his chattel mortgage records but the statute, by prescribing a fee therefor, permits him to do so and certify to that effect.

Your second question asks whether or not a recorder is required to search his real estate or mortgage deed records. In Mechanics Building Assn. v. Whitacre, supra, the court said that the recorder was under no legal duty to search his records and certify to the condition of titles. Unlike parts of the act [Burns' 49-1308, supra] dealing with chattel mortgages, there is no provision for a recorder's fee for searching his real estate or deed records except in the case of mortgages connected with school fund loans wherein a two dollar and fifty-cent [$2.50] fee is provided for examining title to real estate and certifying to same. However, the two dollar and fifty-cent [$2.50] fee is no longer in effect as the same has been superseded by a provision in the Act concerning the loaning of school funds which is Acts of 1943, Ch. 251, Sec. 16, as found in Burns' (1948 Repl.), Section 28-220, wherein it is provided:

"The following fees, only, shall be charged in cases of mortgages for loans: * * * for the recorder's certificate, fifty cents [50¢]; * * *

Section 11 of the Acts of 1943, supra, which is Burns' 28-215, reads in part as follows:
"An applicant for a loan of a part of the common school fund or of the congressional township school fund, or of the permanent endowment fund of Indiana University, shall file with the auditor of the county the certificate of the clerk of the circuit court and of the recorder of the county that there is no encumbrance on the land offered as a security for a loan in either of said offices: * * *:"

Inasmuch as this act concerns the loan of public funds, it is clear that it was the intent of the Legislature that upon proper application the recorder of the county has an affirmative duty to make a search of his records and certify to same on land offered as security for a school fund loan.

Also the Acts of 1953, Ch. 232, Sec. 1, as found in Burns' (1957 Supp.), Section 2-1617a, authorizes the recorder to make a search of his records and certify to a lack of a record or entry therein. Said statute reads as follows:

"Whenever any records or books kept in any public office of this state or any political subdivision thereof, is admissible for any purpose as evidence in any civil proceedings in any court of this state, or in any hearing or determination before any board, commission or officer of this state or any of its political subdivisions, a written statement signed by an officer or person having the custody of official records or books, or by his deputy, that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, to which the seal of his office shall be annexed, if there be a seal, shall be admissible in evidence in any such civil proceeding, hearing or determination as \textit{prima facie} proof of the lack of record or entry as therein specified."

Under the above statute, it is my opinion that the recorder is authorized to search his records including his real estate mortgage or deed records and certify to said search. However, based on my reasoning and authorities in answer to your question number one, I must conclude that the statute is merely permissive authority for searching his records and does not place an affirmative duty on him to do so.
Your question number three asks what fee shall be charged by a recorder for a search of his records and certification thereto. As stated above in answer to your question one, Burns' 49-1308, supra, provides for a fee of ten cents [10¢] for each name searched against and each year covered by the search for searching for chattel mortgages, pledges, incumbrances, releases, assignments and subordinations and certifying to such search.

In addition to the above fee, Burns' 28-220, supra, provides for a fifty cent [50¢] fee for a recorder's certificate in connection with a school fund loan. No fee is authorized for the required search incident to such certification.

I have been unable to find any further statutory fee which the recorder must charge for searching his records. Under Burns' 2-1617a, supra, it is provided that the recorder certify under seal as to the lack of a record or entry in his records. Therefore, under Burns' 49-1308, supra, the recorder must charge a fee of fifty cents [50¢] inasmuch as said statute reads in part as follows: "For each certificate and seal, fifty cents [50¢]."

In your letter you mention Acts of 1955, Ch. 322, Sec. 1, as found in Burns' (1957 Supp.), Section 49-1308a, as having changed many fees formerly charged by recorders. May I point out that this act provides fees that the recorder shall charge for the recording of instruments, and further provides that all laws or parts of laws in conflict with the act are repealed. Since the 1955 Act, supra, refers only to fees for recording instruments, it is my opinion that this act did not repeal the provisions in Burns' 49-1308, supra, which dealt with fees for searching his records and for certifying to same.

In question number four you have asked whether or not the file stamping of a duplicate copy would entitle the recorder to collect a certified copy fee. The term "certified copy" as defined by Black's Law Dictionary, 3rd Ed., at page 301, is as follows:

"A copy of a document, signed and certified as a true copy of the officer to whose custody the original is entrusted."

The word "duplicate" is defined in Black's, supra, at page 629, as:
"When two written documents are substantially alike, so that each might be a copy or transcript from the other, while both stand on the same footing as original instruments, they are called ‘duplicates’ * * *.*" 

In support of the above definitions, see also Nelson v. Blakey (1876), 54 Ind. 29.

It is clear from the above authorities that file stamping a duplicate copy does not constitute signing and certifying as a true copy by the recorder and, therefore, in answer to your fourth question it is my opinion that the file stamping of a duplicate copy by a recorder at the time he received the original for recordation does not constitute a certification of the duplicate copy and does not entitle the recorder to collect a certified copy fee.

You have asked in question number five what law now controls the fees for certified copies in relation to chattel mortgages. It was pointed out earlier in this opinion that the Legislature partially changed the recorder's fee schedule in 1955 by Burns' 49-1308a, supra. However, these new fees did not provide for any change in regard to the certified copy charges in Burns' 49-1308, supra. Therefore, insofar as there was no conflict between these acts, the old certified copy fees were still in existence.

Apparently the Legislature sought to eliminate this in 1957 by the passage of Acts of 1957, Ch. 81, Sec. 1, as found in Burns' (1957 Supp.), Section 49-1336, which purports to be:

"AN ACT concerning the preparation, proofreading and certification of documents by county officials; fixing fees, and providing for the disposition of and accounting for fees collected."

The indication that the above act supersedes all former acts concerning fees for certified copies is found in the following portion of the act:

"* * * Said fees shall be the only legal charge for such service * * *.*"

It is my opinion, in answer to your fifth question, that the fees for certified copies are now found in, and controlled by,
Acts of 1957, Ch. 81, Sec. 1, as found in Burns’ (1957 Supp.), Section 49-1336.

In summary, it is my opinion that the answers to your questions are as follows:

1. A county recorder is under no duty to search his chattel mortgage records although he is authorized to do so.

2. A county recorder is under an affirmative duty to search his records and certify as to such search involving land offered as a security for a school fund loan but in no other case is there an affirmative duty on such recorder to search his records including real estate mortgage or deed records and certifying to such records although he may do so.

3. The fees for searching for chattel mortgages, pledges, incumbrances, releases, assignments and subordinations and certifying to such search are controlled by Burns’ 49-1308, supra. The recorder must charge a fifty cent [50¢] fee for his certificate which certifies that there is no incumbrance on land offered as a security for a school fund loan. Where a recorder makes a certificate and seal certifying to a lack of a record or entry in his records, he shall charge a fifty cent [50¢] fee pursuant to Burns’ 49-1308, supra.

4. The process of file-stamping a duplicate copy does not make the duplicate a certified copy, therefore no certified copy fee can be charged.

5. The fees for certified copies are now controlled by Acts of 1957, Ch. 81, Sec. 1, as found in Burns’ (1957 Supp.), Section 49-1336.