

## Opinion No. 55-6242

July 28, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mrs. Natalie Smith Buck, Secretary of State, Santa Fe, New Mexico; Mrs. Dorothy Herring, Clerk, Chaves County, Roswell, New Mexico; Mr. Victor C. Breen, District Attorney, Tenth Judicial District, Tucumcari, New Mexico

Under separate letters you have requested the opinion of this office upon several questions concerning fees to be charged for recordation of instruments under Section 1, Chapter 213, Laws of 1955. I have taken the liberty to consolidate your requests since all questions presented deal with the same subject. Section 1, Chapter 213, Laws of 1955, first lists a series of instruments and, after each, the fee to be charged for recordation thereof. Thereafter in two paragraphs are set out special methods for computation of fees for instruments in special categories. These read:

"For all instruments recorded, the recording fee for which is not fixed herein, a charge shall be made of \$ 1.75 for the first 700 words and 25c for each additional 100 words, except where the instrument is photocopied, in which event a charge of \$ 1.75 shall be made for each page, or portion thereof in the instrument."

"For each instrument recorded having more than two (2) acknowledgments, an additional fee of 50c shall be charged for each additional acknowledgment; and for each instrument containing more than 200 words in the description of the property contained in such instrument, an additional charge shall be made of 25c for each 100 words. This additional charge shall not be made in cases where the instrument is photocopied or where the recordation of the instrument is determined upon the number of words contained in such instrument and not upon a flat fee herein fixed. In all cases where standard forms are fixed and non standard forms of instruments are recorded, for which a flat fee is fixed, and such instruments exceed in length the standard form prescribed, a charge of 25c shall be made for each 100 words in excess of the standard form prescribed, except where the instrument is photocopied."

Your questions are summarized as follows:

1. Does the portion of the Act concerning photocopying require a charge of \$ 1.75 per side of instrument, i.e., per page, regardless of the brevity of each page and regardless of whether or not the instrument is specifically listed?
2. What is the proper fee for a recordation of an amortization mortgage where the instrument is photocopied?
3. Is the detailed list containing the fixed fee inflexible, i.e., must those fees, not more nor less, be charged?

In the first instance we must determine whether or not photocopy recording requires a charge of \$ 1.75 per page regardless of whether the instrument is listed or not. At first glance it would seem that the \$ 1.75 per page fee applies only to photocopied instruments not listed. This apparent conclusion suggests itself because of the fact that the first paragraph, after providing special rates for instruments not listed, is followed by a provision for an exception in the event the instrument is photocopied. The exception for photocopying thus would seem to apply to the unlisted group of instruments, and, it would follow that for photocopying of listed instruments the specific prices listed would apply. Examination, however, of the history and the wording of the whole act and consideration of cost factors in photocopying and ordinary recording proves this apparent conclusion wrong and that the legislative intent must have been otherwise.

Starting in 1939, and in 1941 and 1953 when this act was amended, nothing was said therein concerning photocopying of instruments and the fees applicable thereto. It was in 1947 that photocopying of public records was first authorized.

Sections 2 and 3, Chapter 185, Laws of 1947. It is noticed that since 1939 an extra fee has been charged for instruments having more than two acknowledgments or more than 200 words in the description. And this applied to the listed instruments and not those unlisted where the fee was computed upon the number of words. It is further noticed, that the act as amended in 1955, provides for the extra charges where there are two acknowledgements or more than 200 words in the description, but an exception is made in the case of photocopying. An exception for photocopying is also made from the ordinary extra charges for recording listed non-standard forms where listed standard forms are fixed. Presumably then the fees chargeable for recording of instruments, through the last Legislature, were related to the cost of ordinary recording, i.e., typing.

It is apparent further that in 1955 account was taken of the costs incurred in photocopying recordings.

The basis for the fees then is related to the amount of work and costs involved in recording, whether it be photocopying or otherwise. Costs being the consideration upon which fees are fixed, it follows that the \$ 1.75 fee per page for photocopying applies to all instruments whether listed or not and regardless of how many words a page contains. It costs no more, nor any less, to photocopy a page from an instrument listed or to photocopy a page from an instrument not listed, and the cost is the same whether a page contains 10 words or whether a page contains 300.

From the above we conclude that the answer to your first question is in the affirmative.

The answer to your second question is that \$ 1.75 per page must be charged.

Concerning your third question, I believe that the fees prescribed by the Act in question are mandatory and those charges, no more nor less, must be collected. In this respect, your attention is called to Section 71-1-13, N.M.S.A., 1953, which provides:

"No county clerk of any county shall receive any instrument of writing for filing or record **unless his legal fees for such filing and recording shall have first been paid.**"  
(Emphasis supplied)

And Section 15-43-16, N.M.S.A., 1953, which provides, in part:

"All county officers **shall respectively charge and collect all fees, commissions, mileage and per diem heretofore and now, or which hereafter may be authorized by law to be charged and collected for official services rendered by them,** and shall keep an accurate and itemized account thereof, and on or before the tenth day of each month pay the same over to the county treasurer of their respective counties, . . ."  
(Emphasis supplied)

To the same effect is Section 15-43-7, N.M.S.A., 1953, applying to counties of the sixth class.

The above statute, in the opinion of this office, prohibits a county from collecting less than the prescribed fees. To hold otherwise would be to permit the county clerks, if they so desired, to charge nothing for this service. The power to charge less than the prescribed fees, or not to charge at all, would be giving a county clerk the power to impair a source of county income. I cannot conceive that the Legislature intended this. Your third question, therefore, is answered in the affirmative.

I trust this answers your inquiries.

By: Santiago E. Campos

Assistant Attorney General