

Opinion No. 14-1243

June 9, 1914

BY: H. S. CLANCY, Assistant Attorney General

TO: Honorable Howell Earnest, Traveling Auditor, Santa Fe, New Mexico.

CHATTEL MORTGAGES.

Charge being made by county clerk for release of chattel mortgages.

OPINION

{*106} In response to your oral request for the opinion of this office as to the matters inquired about in a letter addressed to you by Mr. P. J. Read, Cashier of the First National Bank of Fort Sumner, in regard to a charge of \$ 1.00 which he says is being exacted by county clerks for "releasing of chattel mortgages," I have to say that on {*107} February 11, 1914, I addressed a communication upon this subject to Mr. A. H. Harvey, Clerk of Lincoln County, a portion of which reads as follows:

"Section 2361 of the Compiled Laws of 1897, distinctly provides that there shall be charged for recording and indexing an affidavit of renewal of a chattel mortgage, the sum of 50c. So far as the satisfaction of a chattel mortgage is concerned, it does not appear that the clerk is entitled to any fee whatever in connection therewith. Section 2366, Compiled Laws of 1897, makes it the duty of the mortgagee, his assignee or personal representative, to enter such satisfaction or to cause such satisfaction to be entered of record under the head of 'remarks' on the record of mortgages, and should he neglect or refuse to enter such satisfaction, he is liable in damages to the mortgagor. You will see by the language of this section that no duty whatever is imposed upon the county clerk to enter a satisfaction of a chattel mortgage, and for that reason no fee is provided which he can demand."

From the foregoing you will observe that no duty is imposed upon a county clerk to enter a satisfaction of a chattel mortgage, but if the mortgagee sees fit to file with a county clerk what he pleases to designate a release of a chattel mortgage, it then becomes the duty of such clerk, under the provisions of Section 778 of the Compiled Laws of 1897, to file and record the same, and to charge for its recording at the rate of 10c for each one hundred words recorded, and to further charge for a certificate and seal to such document the sum of \$ 1.00, as provided for in Section 780. It will be observed that Section 778 provides when any land title, **or other document** is delivered to the recorder to be recorded, he shall proceed as above set forth. A so-called release of a chattel mortgage would come under the head of "other document."