

## Opinion No. 15-1566

June 24, 1915

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. Edward L. Fortune, County Clerk, Socorro, N. M.

**As to the filing and recording of chattel mortgages.**

### OPINION

{\*145} I have just received your letter of the 23rd inst asking me to inform you whether under the provisions of Senate Bill No. 34 as amended, which is Chapter 71 of the session laws of 1915, the county clerk is required to retain in his files the original instrument in a chattel mortgage or a true copy thereof when such instrument is both filed and recorded.

The statute referred to requires that every chattel mortgage or a copy thereof shall be filed in the office of the county clerk of the county wherein the property is situate at the time of the {\*146} execution of the chattel mortgage, with a proviso that the chattel mortgage may also be recorded in the same manner as an instrument affecting real estate. Section 4 provides that upon receipt of a chattel mortgage or copy thereof, the county clerk shall endorse thereon the time of receiving it and shall retain it in the files of his office, but authority is given in the same section to the party in whose favor the instrument is executed to withdraw the original if filed whenever a true copy is filed with the clerk, "but this provision is given" in case of recording as hereinbefore provided."

From these provisions the conclusion seems to be that an interested party must file the chattel mortgage or a copy thereof and may have it recorded if he sees fit, and if he does have it recorded, he may withdraw the original if a true copy is filed with the county clerk, and, therefore, the clerk must retain in his files either the original chattel mortgage or a true copy thereof although the instrument or copy may have been both filed and recorded.