

## Opinion No. 15-1568

June 30, 1915

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

**TO:** Druss Commission Company, Kansas City, Missouri.

**Filing and recording of chattel mortgages.**

### OPINION

{\*147} I have just received your letter of the 28th instant relative to the requirements of the new chattel mortgage law in this state. You say that a few days ago you mailed to a county clerk's office in New Mexico an original chattel mortgage and a copy thereof, with the request that the copy be filed and the filing of the copy certified on the original mortgage and the original mortgage returned to you, but the clerk evidently construed the law as requiring the original to be filed and a certificate on the copy of the filing of the original, and he wrote you that if you desired the original back you could get it by paying the fees for recording it and by filing a copy.

I am of opinion that the clerk was mistaken in his construction of the statute. The statute requires that the chattel mortgage, or a copy thereof, shall be filed in the office of the county clerk of the county wherein the property to be affected is situate, and the statute permits that the chattel mortgage may also be recorded in the same manner as an instrument affecting real estate. When the clerk receives the chattel mortgage, or a copy thereof, he must indorse thereon the time of receiving it, and retain the same in the files of his office, provided that in case of recording, the party in whose favor the instrument is executed shall have the right to withdraw the original, if filed, whenever a true copy thereof is filed with such county clerk. This last clause is what has misled the clerk because, according to your statement, you never filed with him the original chattel mortgage, nor did you ask to have it recorded. You sent to him a copy of the chattel mortgage to be filed, and asked him to make a certificate on the original mortgage of the fact of the filing of the copy. He appears to have incorrectly assumed that you were filing the original mortgage, and if he were correct in that assumption his further action would be correct in taking the position that he could not return you the original mortgage unless it should be recorded and a copy filed. If your direction {\*148} to him was clear and as stated in your letter to me, he ought to have kept the copy and, in compliance with your request, put on the original a certificate of the fact of the filing of the copy for which, as you properly say, you would be required to pay an additional fee for the making of the certificate.