

Opinion No. 16-1774

April 6, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Hon. E. R. Wright, Santa Fe, New Mexico.

Filing and recording of chattel mortgages.

OPINION

{*345} I have your letter of even date herewith relative to fees for filing and recording chattel mortgages. Your view of the statute and mine are the same, although you think that one sentence in a letter from this office of November 13, 1915, to the Traveling Auditor, might be misleading as to what must be done with the original chattel mortgage. I will, as briefly as possible, state my view of the law as to the matters covered by that former letter and another one of June 24, 1915.

{*346} The law is to be found in Chapter 71 of the Laws of 1915 and was intended, evidently, to reduce the expenses connected with the creation of chattel mortgage liens. It provides that every chattel mortgage, or a copy thereof, shall be filed in the office of the clerk of the county wherein the property thereby affected is situated, with a proviso that the chattel mortgage may be recorded in the same manner as an instrument affecting real estate. Such recording is not required but is optional with the mortgagee. If the mortgage is recorded the mortgagee may withdraw the original if filed, when a true copy thereof is left with the clerk. The clerk must collect in advance for the filing and entry of the mortgage and for the entry of satisfaction thereof, the sum of twenty-five cents and no more, but if the mortgage is recorded, he is to charge the fees provided by law for the recording of instruments affecting real estate.

The foregoing is a summary of the matters intended to be covered by this letter. It is to be noted that it is the filing of the mortgage, or a copy thereof, which preserves the lien on the property. The copy so filed need not be a certified copy nor is it required if the mortgagee withdraws the original after he has filed it, that the true copy thereof to be left in its place is to be certified. and no charge should be made by the clerk for the filing of such a copy nor for any certificate thereof by him if any should be made.

As you inform me that there has been much variety of construction of this statute by different clerks, I think it well that general publicity should be given to this letter in order to avoid any mistakes or difficulties as far as possible.

I will say in addition to the foregoing, in order to avoid any chance of misunderstanding, that the mortgagee is not compelled to file the original mortgage nor to exhibit it to the recorder. If he chooses to file only a copy, that is a compliance with the statute, but if he

wants his mortgage recorded, he must file the original, with the privilege of withdrawing it as hereinbefore stated.