

Opinion No. 18-2085

February 15, 1918

BY: MILTON J. HELMICK, Assistant Attorney General

TO: Messrs. Carter & Stansell, Attorneys at Law, Lovington, New Mexico.

What Records Should Be Transcribed from Old Counties to New Ones.

OPINION

We have your favor of the 12th instant wherein you ask for our opinion as to what instruments should be included in transcripts of records for new counties created from old ones. You ask whether the following should be included: chattel mortgages, which have been released of record, chattel mortgages which have been barred by the Statute of limitations, chattel mortgages recorded under the law in force prior to 1915, and instruments that are either unacknowledged or defectively acknowledged.

Chapter 107 of the Laws of 1917, authorizes:

"the transcribing of all that portion of the records * * * which affect persons, real estate and personal property,"

situated in the new county. It seems to me that the above provision is broader than the old law, which it amends, namely, Section 1123 of the Compilation. The former section authorizes the transcribing:

"of the deeds, deeds of trust, mortgages and bills of sale, and other instruments."

The old law was rather more specific in describing what should be transcribed than the new law, which seems to be very broad and general in such respect. Under the terms of the present law, everything which affects persons, real estate and personal property should be transcribed, and, hence, the meaning of the phrase "which affects persons, real estate and personal property" must be determined. It seems to me that the word "affect" is used in its ordinary broad and general sense, rather than in any technical sense, and if such is the case, it would follow that virtually everything on record is to be transcribed. I do not think it was intended to use the word "affect" in the technical sense of "affecting title." Not everything that affects property necessarily affects the title of such property -- *Nichols v. Voorhis*, 74 N.Y. 28. Furthermore, the use of the word "persons" in connection with the words "real estate" and "personal property," would indicate the ordinary use of the word "affect." The instruments you inquire about would none of them affect the title of property perhaps, but they do affect the property, and many occasions may arise in collateral matters where the proof of the execution of the instrument might be material, even though the title of the property was not concerned in the matter. I do not think a person copying the records can pass upon the validity of

acknowledgments, or that he can omit unacknowledged instruments, which have already been admitted to record.

My conclusion is that the authorization in Chapter 107 of the Laws of 1917, is to be construed broadly, and that it was the intention of the legislature to provide for the transcribing of the complete record applicable to the new county. I do not believe that the transcriber is allowed much discretion, but that he should copy the records in line with a broad construction of the law.