

Opinion No. 42-4195

December 1, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*285} This will acknowledge receipt of your letter of November 30, 1942, and also letter which you received from Mr. Hugo Seaburg, Attorney at Law, Raton, New Mexico.

In your letter you ask whether or not a County Clerk should charge the fee set for recording a non-standard form of deed to record a deed which varies slightly from the approved standard form of deed.

This matter is governed by Chapter 179, Laws of 1939, as amended by Chapter 22 of the Laws of 1941. The purpose of this act was to enable the various County Clerks to use printed recording books with printed matter and blanks corresponding to the standard forms of deeds and other instruments so that they could fill in the proper blanks to correspond with the deed or other instrument presented for recording and thereby eliminate the necessity of copying the instrument in full. Section 2 of this act, as amended, provides that:

"County Clerks shall receive for recording the following fees:

"Standard Form of

Deeds \$ 1.50

"Non-Standard Form of

Deeds \$ 1.75"

It apparently is the contention of Mr. Seaburg that if there is only a slight variation from the standard form of deed, the County Clerk might ignore it or change the recording book by interlineation. However, this would cast upon the County Clerk the duty of determining at his peril what is such a slight variation and as it is no hardship on the person seeking to record the deed to use a standard form, I do not believe {*286} that the County Clerk should be obliged to accept such burden.

In view of the foregoing, it is my opinion that if the deed presented for recording varies from the standard form so that the County Clerk must do more than fill in the blanks in his printed recording book, the deed is not a standard form and, hence, the County Clerk may charge the fee provided for the recording of non-standard forms of deeds. It, of course, is not necessary that the form of deed be a "photographic" copy of the printed recording books as suggested by Mr. Seaburg or that each line of the deed contain the

same number of words as the recording book so that the deed is its exact counterpart. It is sufficient that the words and blanks in the deed follow the same continuity as the approved form of deed printed in the recording books so that when the blanks in the recording book are filled in it will be a copy of the deed.

I am enclosing a copy of this opinion for your convenience.

By ROBERT W. WARD,

Asst. Atty. General