

**Opinion No. 42-4205**

December 31, 1942

**BY:** EDWARD P. CHASE, Attorney General

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

{\*293} We have your letter of December 16, 1942 requesting an official opinion from this office on whether or not a mortgagor is entitled to have the original document released to him on having filed a satisfaction to said mortgage.

Upon examining the pertinent statutes, we have been unable to find any provision of our law authorizing the county clerks to rereturn any instrument filed of record upon the satisfaction's having been entered. An option is given under our laws for the parties to have either the original chattel mortgage filed or copy thereof. If they elect to have the original filed, it shall be retained in the files of the county clerk's office. Section 63-503, New Mexico Statutes Annotated, 1941 (Section 21-103, New Mexico Statutes Annotated, 1929 Compilation). This section provides that:

"Upon receipt of a chattel mortgage, copy thereof, assignment of chattel mortgage, copy of such assignment, affidavit in lieu of an assignment, or copy of such affidavit, the county clerk shall endorse thereon a filing number in consecutive order, and the time of its reception and shall **retain same in the files of his office.**"

In view of this provision, it is my opinion that a county clerk is justified in not returning an instrument which was filed of record to one of the parties.

It is my further opinion that the provision of our statutes which authorizes county clerks to make a copy of such chattel mortgage has no effect on this section, unless the parties elect to file of record such a copy instead of the original chattel mortgage, in which event they would not be allowed to ask for the return of such copy upon the filing of the satisfaction.

Trusting that the foregoing sufficiently answers your inquiry, I am

By HARRY L. BIGBEE,

Asst. Atty. General