

**Opinion No. 44-4467**

March 2, 1944

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

**TO:** Anna D. Fishback, Probate Judge, Fort Sumner, New Mexico

In your letter dated February 28, 1944, you refer to Section 33-116 of the N.M. 1941 Compilation, and request an opinion regarding the certification of letters testamentary and of administration. This section provides, in part, as follows:

"All letters testamentary, and of administration, and all bonds and affidavits of executors and administrators, shall be recorded by the Clerk, in a well bound book kept for that purpose, before such letters are delivered to the executor or administrator, and the Clerk shall certify on the letters that they have been recorded, and if any Probate Judge shall deliver, without complying with the requirements of this section, any such letters, he shall forfeit to the party injured double the damages occasioned by such default."

This language is undoubtedly intended to prevent the Probate Judge from issuing letters testamentary and of administration, and delivering the same to the executor or administrator without requiring the same to be recorded and a notation endorsed upon the original letters and the copy of the letters testamentary and of administration, referring to the date and the book and page where the same is recorded. Such notation, being under seal of the Probate Clerk, is a sufficient compliance with this statute, relative to a certificate by the Clerk. The notation could be similar to that made by the County Clerk upon a deed which has been recorded.

Trusting that the foregoing fully answers your inquiry, I am

By C. C. McCULLOH,

First Asst. Atty. General