

Opinion No. 44-4510

May 15, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. David W. Carmody, District Attorney, Santa Fe, New Mexico

We have your letter of March 22, 1944, wherein you request our opinion concerning whether it is necessary for the Clerk of the District Court to keep the same type of records as are now kept by the Probate Clerk.

An official opinion was given concerning this general question on September 15, 1941, and another opinion was given on April 6, 1942. The two opinions appear to be in conflict; and upon studying the matter, we are affirming Opinion No. 3900, which was given on September 15, 1941, and are specifically reversing Opinion No. 4061, which was given on April 6, 1942, insofar as the later opinion is inconsistent with the earlier opinion, or inconsistent with matters contained in this opinion.

The Opinion of September 15, 1941 states:

"I conclude that it was the Legislative intent to charge the various clerks of the District Court with all the duties previously performed by County Clerks, and all Probate proceedings which are originally filed in the District Court pursuant to the authority granted by the 1941 Act."

We specifically affirm this statement, and, in further elaboration, state that in our opinion this interpretation, with which we agree, requires the District Court Clerks to keep the same types of records as are required to be kept by the Clerk of the Probate Court.

We find no intention expressed in the statute authorizing the District Court Clerks to keep a record of Probate matters which are filed originally in the District Court, other than is required by statute when such matters are filed originally with the Probate Court. This, of course, requires the District Court Clerk to comply with Sections 16-428 and 16-429 of the N.M. 1941 Compilation, as well as all other sections concerning the keeping of records in the Probate Courts.

Hoping that the above fully answers your question, I remain,

By HARRY L. BIGBEE,

Asst. Atty. General