

Opinion No. 45-4763

July 24, 1945

BY: C. C. McCULLOH, Attorney General

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

{*113} Replying to your letter of July 20, 1945, wherein you request an opinion in answer to an inquiry by one of the County Clerks as to the alteration of instruments that have been filed of record.

The only section I find in our statutes, relative to this subject, is Section 41-3602 of the N.M. 1941 Compilation. This section is lucid, clear and should be read by every recorder before contemplating the alteration of any record.

"If any person shall unlawfully alter, deface, mutilate, destroy, abstract or conceal any record or part thereof, of any court, justice of the peace, or any state, county, district or municipal office or officer, or any other public record or any paper, or writing duly filed in such court or office, or with any justice of the peace or public officer, he shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment not exceeding five (5) years, or by a fine of not more than \$ 500.00, or by both such fine and imprisonment."

There is an excellent article in American Jurisprudence, Volume 45, "Records and Recording Laws", beginning at Page 415, and it is my opinion that every recorder should read it.

The following is cited from Section 71, Page 459:

"No custodian of records is authorized to tamper with them. Even where a record is defectively made, the recorder cannot correct the mistake on his own motion, especially where he acts at the suggestion of one not a party to the instrument; the alteration is to be disregarded, and the record is to be regarded as it stood before it was tampered with. * * *"

By THOS. C. McCARTY,

Asst. Atty. General