

**New Counties, Records of. Records for New Counties,
What to Be Transcribed. Transcribing Records, From Old
to New Counties.**

Since there is no means of ascertaining what instruments relating to personal property, would have to be transferred from an old county to a new county, and also because the law makes no provision for the removal of such records, chattel mortgages and articles of incorporation must be transcribed as ordinary records upon the division of a county.

September 28th, 1914.

Hon. Dan J. Heyfron,
County Attorney,
Missoula, Montana.

Dear Sir:

I have your communication under date the 16th instant, requesting my opinion upon the following question:

"Whether in transcribing the records of this county in making up the new records for Mineral county, that the old records here such as chattel mortgages, articles of incorporation and miscellaneous papers of various kinds, could be just withdrawn from the files here and refiled in the new files of Mineral county, a satisfactory notation being kept to indicate that such papers had been withdrawn and refiled in the new county records?"

The nature and effect of instruments which are filed in this state without being recorded, particularly chattel mortgages are such, and the results of such removal capable of so many important and diverse effects upon the parties to such instruments, that the question becomes an important one. For instance the chattel mortgage law of this state provides against the removal of property covered thereby from the county wherein it was at the time of the making of the instrument. Does the cutting down of the territory of the old county wherein the mortgage was made limit pro tanto the right to move the property? Or, does the territory from which the property may be removed remain the same as at the time of the making of the mortgage, regardless of the change of boundaries? Or, does the addition of territory to the particular neighborhood in which the property was situated as a new county enlarge the territory within which it can be moved? Another question which seems insurmountable is: how is the person transcribing the records to know whether the property described in the chattel mortgage is within the new county or the old county, and how is the county clerk of the old county to know what chattel mortgage he is to transfer, and what ones he is to retain in the old county?

"A paper is said to be filed when it is delivered to the proper officer and by him received to be kept on file. In addition to this the proper office of an index is to afford a ready means of finding something else which contains the information desired, and if that something else is not in the office where the index is kept it would not serve the purpose for which it is intended."

Strauberger vs. McSwenn, 14 S. Carolina, 35.

In the case of chattel mortgages, the original is the record, and the index required to be kept is merely the means of readily attaining access to that record. The transcriber would have no more authority to take the originals out of the office where they were first filed than he would to take the books in which the records affecting real estate are kept. An examination of the law discloses no authority for the removal of the original documents or any authority for entries to be made upon the register showing such removal, and consequently any such removal or notation upon the register would be without official sanction, and would convey no information as to the present status of the instrument, which is the information usually sought, and the purpose for which the original is kept.

I am, therefore, of the opinion that since there would be no means of telling which instruments to remove and which to leave where they were originally filed, and for the further reason that the law makes no provision for such removal, that the plan outlined in your letter cannot be legally followed, and that such records must be transcribed as ordinary records of deeds or mortgages.

Yours very truly,

D. M. KELLY,
Attorney General.