

Transcribing of Records, Law Governing. Records for New Counties, Transcribing of. New Counties, Law Governing Transcribing of Records.

The provisions of Senate Bill 45, Chapter 139, Laws of 1915, relating to the transcribing of records from the old to the new county do not apply where the election for the creation of the new county was held prior to the passage of said bill.

March 26, 1915.

Hon. Wm. G. Armstrong,
County Attorney,
Terry, Montana.

Dear Sir:

I am in receipt of your letter of the 23rd instant, requesting my

opinion as to that part of Senate Bill No. 45, introduced by McCone, which relates to the transcribing of records in new counties, and which reads:

"Providing that all chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff certificate of sale, liens and original affidavits of registration which may effect or relate to property or persons situate within the new county shall be by the County Clerk of the old County delivered to the County Clerk of the new County and be preserved by said County Clerk of the new county as permanent files of such new county."

You state that Prairie County was created on February 5th, 1915, and the County Clerk at Miles City, Custer County, does not like to turn over the records mentioned in the above excerpt of the law before having an opinion on the matter from this office, as he thought the new law might not apply to Prairie County, which was created before the Bill was passed; that the County Clerk at Glendive, Dawson County, has delivered the records enumerated in the above excerpt of the law to the County Clerk of your County.

Senate Bill No. 45, relating to the creation of new counties became a law on the 9th day of March, 1915. Section 16 contains the following exception:

"This Act shall not apply in any case whereby the election has been held under the Act passed by the Thirteenth Legislative Session for the creation of counties and a majority vote has been cast in favor thereof."

Insofar as your county is concerned, Chapters 133 and 135, Session Laws of the Thirteenth Legislative Assembly, must be held to be in full force and effect. Section 11 of Chapter 133, prescribes the duties of the county commissioners regarding transfer of records and supplies therefor. This Section has been heretofore construed by this office in an opinion to Hon. Dan. J. Heyfron, County Attorney of Missoula County, under date of September 28th, 1914, which opinion may be found in Volume 5, Opinions of Attorney General, at page 619, wherein the conclusion was reached that the records which you mention must be transcribed as ordinary records of deeds or mortgages.

The conclusion is inevitable that the County Clerk of Dawson County was in error in delivering to your County Clerk the records enumerated in the excerpt of Senate Bill No. 45, quoted, all of which should be returned to the parent county, there to be transcribed in the same manner as other records.

Yours very truly,

D. M. KELLY,

Attorney General.