

**County Records, Transfer of From Old to New County.  
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Where a county was created prior to the passage of Chapter 139, Session Laws of 1915, the records in the office of the clerk of the parent county must be transcribed as provided for in the law under which the new county was created.

September 29, 1915.

Hon. D. J. Sias, Jr.,  
County Attorney,  
Chinook, Montana.

Dear Sir:

Under date September 21st, you submitted for my consideration the question:

"May the County Clerk of Blaine County deliver to the County Clerk of Phillips County all chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff's certificates of sale, liens and original affidavits of registration now filed in his office which may affect or relate to property or persons situate within the new county of Phillips to be preserved by the said County Clerk of the new county as permanent files of such new county, or must said records be transcribed, and the said original files be retained by the County Clerk of Blaine County?"

You have submitted a short brief and argument upon the question, and have reached the conclusion that these records must be transcribed, which conclusion I believe to be correct.

Phillips County was created under and by virtue of the provisions of Chapter 133 and Chapter 135, Session Laws of the 13th Legislative

Assembly; by the terms of that Act, all records of the old county pertaining to property within the new county, were required to be transcribed. After the creation of Phillips County, under the provisions of the Laws of 1913, Chapter 139 of the Session Laws of the 14th Legislative Assembly was passed, and by the provisions of Section 11 of this Law, such records as those mentioned in your question were required to be delivered by the County Clerk of the old county 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. The question to be decided then, is whether the officers of the two counties shall follow the law of 1913 in this regard, or that of the later Act of 1915. There should be little question as to the matter, were it not for the provisions of Section 16 of Chapter 139, which is in part as follows:

"All Acts and parts of Acts in conflict herewith are hereby repealed, with the exception: "This Act shall not apply in any case whereby the election has been held under the Act passed by the Thirteenth Legislative Session for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," but the provisions of this Act shall be deemed in full force and effect so far as they may affect any proposed new county now in process of creation, unless said new county can comply with the requirements of this Act."

It will be noted that a saving clause has been inserted by the legislature. An examination of this language shows apparent contradictions. First: it says this Act shall not apply in any case where the election has been held under the old law;; Second: it provides that the provisions of this Act shall be deemed in full force and effect so far as they may affect any proposed new county now in process of creation, unless said new county can comply with the requirements of this Act. These two provisions, if taken literally are contradictory in terms. One states that the law shall apply to new counties; the other, that it shall not, and the last clause "unless said new county can comply with this Act," seems to negative the second. We must resort to the general purpose of the law to get the meaning of the legislature. The chief change made in the law was the increase in the requirements for the formation of new counties. The percentage of signers upon petitions, the property requirements and the requirements as to area, were all increased by the new law. Apparently by the saving clause of Section 16 it was intended to exclude from the operation of this Act all counties in the process of formation which had held elections; that is in counties where election had already been held, such new counties were not to be required to come up to the requirements as to property and area of the new law. Under this view the second clause would mean that the Act was in full force and effect as to counties in process of formation, which had not had elections, and the clause "unless said new county can comply with the terms of this Act" would mean unless such new county as had an election, or unless it can meet the requirements of the new law in the matter of petition, property and area. As stated in your letter upon the subject, Phillips County was created prior to the passage of this Act, and under the provisions of the laws of 1913,

it therefore, comes within the saving clause of Section 16 of Chapter 139, and must look for direction to the law under which it was created, and as found by you, under the terms of that law, the records spoken of must be transcribed.

Yours very truly,

J. B. POINDEXTER,

Attorney General.