

Counties, New—Records, Filed and Recorded To Be Transferred and Transcribed.

Upon the creation of a new county, recorded records of the old county should be transcribed, and those required to be filed only should be transferred.

February 9th, 1920.

Mr. O J. Thompson,
County Attorney,
Circle, Montana.

Dear Sir:

I am in receipt of your letter of recent date stating that the County Clerk of Dawson County refuses to deliver to the County Clerk of McCone County attachments, *lis pendens*, tax sale certificates, sheriff's certificates of sale or seed grain contracts, and asking me to advise you whether under

Section 12 of Chapter 33, Session Laws of 1919 (the Act creating McCone County), these should be delivered by the County Clerk of Dawson County to the County Clerk of McCone County, or whether the same should be transcribed.

Section 12 of Chapter 33, after providing for the transcribing of certain records, then provides:

“* * * that all chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff’s certificates of sale, liens and original affidavits of registration which may affect 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.”

I am of the opinion that it was clearly the intention of the legislature to require that with reference to all instruments which are required by law to be recorded, the records should be transcribed, and that, with reference to all instruments which are required by law to be filed, but not recorded, the same should not be transcribed, but the original instruments filed in the office of the County Clerk of the old county should be delivered to the County Clerk of the new county. With reference to instruments required by law to be recorded, all or practically all of them, have been returned to the owners, and are not in the possession of the County Clerk of the old county, consequently the only way in which the new county could obtain any record of such instruments would be by having the records of such instruments transcribed. However, with reference to instruments required to be filed, but not recorded, all of these instruments are not only in the possession and custody of the old county, but, after the new county was organized and commenced business as a county, would be of no use or benefit whatever to the old county, consequently the delivery thereof to the new county would not in any manner whatever affect the business or interest of the old county, and would, at the same time, save the new county the cost and expense of having the same transcribed. I think that this was clearly the view and the intention of the legislature, and I am, therefore, of the opinion that under said Section 12 the County Clerk of Dawson County must deliver to the County Clerk of McCone County all instruments, of every kind and nature, affecting property or persons in McCone County, and which have been filed in Dawson County, and which were not required by law to be recorded.

Respectfully,

S. C. FORD,

Attorney General.