

Chattel Mortgages on File—New Counties—Transfer.

Where a new county is created, the County Clerk of the old county should deliver to the new county all chattel mortgages he may be able to ascertain rightfully belong to such county.

March 28th, 1919.

Mr. Frank Hunter,
County Attorney,
Miles City, Montana.

Dear Sir:

I have your letter of the 25th inst., with reference to the County Clerk and Recorder of Custer County surrendering and delivering to Powder River County the original chattel mortgages, etc., now on file in his office.

An examination of the bills creating all of the new counties passed by the last legislature discloses that they each contain provisions almost identical with those found in the latter part of Section 11, Chapter 139, Session Laws 1915.

Prior to the enactment of Chapter 139, Session Laws 1915, no provision was found in any law for delivery of chattel mortgages, etc. to a new county when it was created, and even those acts of the legislature creating new counties passed prior to 1915 contained no such provisions. The result was that all such instruments were transcribed, and it became somewhat notorious that those having contracts to transcribe records padded their transcribing by including practically every such instrument. It was doubtless to save this expense that the legislature deemed it proper to require the original instruments to be delivered to the new county rather than to have them transcribed.

This matter has been under consideration by me at the request of officers of both the old counties and the new counties, the principal difficulty seeming to be with reference to determining just what particular instruments should be delivered and what should not be. In many chattel mortgages, etc., while the property is perhaps sufficiently described, its location is not so described that it may be ascertained from the instrument whether the property is situated in the old or in the new county. After going over the matter with a number of the officers of these counties I have advised them that they should adopt a uniform practice with reference to these instruments, such practice to be substantially as follows:

If it can be clearly ascertained from the instrument itself whether it should remain in the old county or delivered to the new county, the decision should be controlled by the instrument. If it is impossible to ascertain such fact from the instrument, then inquiry should be made of the mortgagee, incorporators named in the articles of incorporation, holders contract notes, etc., regarding the location of the property and such location should control.

I know of no constitutional provision which might be construed as prohibiting the delivery of the original instruments to a new county. You should, therefore, advise the County Clerk of Custer County as you have indicated in your letter and direct him to deliver to the new county all such instruments as he may be able to ascertain properly belong to such new county.

Respectfully,

S. C. FORD,

Attorney General.