

Probate Records—Loose Leaf Ledgers—Clerk of Court.

It is legal for the clerk of court to use a loose leaf ledger equipped with a key lock for the purpose of recording the probate records specified in section 4815 R. C. M. 1921.

April 24, 1928.

Thomas R. Forbes, Esq.,
Clerk of District Court,
Wolf Point, Montana.

My dear Mr. Forbes:

You have requested my opinion whether it is legal for you to use a loose leaf probate register provided with a key lock.

The question of the legality of using loose leaf records has been passed upon by this office in several opinions. In one opinion in volume 6, Opinions of Attorney General, at page 201, the conclusion was reached that the county clerk has no authority to keep records in loose leafed books. That opinion was based upon the fact that the law requires such records to be kept in a well bound book.

In an opinion which you will find in volume 4, Opinions of Attorney General, at page 356, it was held that the secretary of state may use a loose leafed book for keeping certain records. The latter opinion was based upon the fact that the statute does not prohibit the secretary of state from using such a book and upon the further fact that the original instrument recorded by the secretary of state remains in his official possession.

Section 4815, R. C. M. 1921, requires the clerk of court to keep a "probate record book in which must be recorded all wills", etc. It also requires him to keep a "register of probate and guardianship proceedings, in which must be entered", etc.

It will be observed that the statute does not specify that the above books shall be "well bound", nor does it contain any directions from which it could be inferred that only a permanently bound record can be used.

Furthermore, in the case of probate records the original instrument still remains in the custody of the clerk of the district court.

In view of the above consideration, it is my opinion that it is legal for you to use a loose leafed register, equipped with a key lock, for the purpose of recording probate records.

Very truly yours,

L. A. FOOT,
Attorney General.