

**Deeds—County Clerk and Recorder—Acknowledgments—  
Recordation.**

A deed which bears no acknowledgment by the grantor, but only the names of subscribing witnesses, is not entitled to be recorded, but the instrument must be first proved in one of the two alternative methods set forth in the sections mentioned in the opinion.

Mr. Arlie M. Foor,  
County Attorney,  
Wolf Point, Montana.

December 19, 1930.

My dear Mr. Foor:

You have requested an opinion on the question of whether the county clerk must accept for recordation a deed which was not acknowledged by the grantor but which was signed in the presence of two subscribing witnesses.

Section 4796, R.C.M. 1921, provides that deeds must be recorded upon the payment of the proper fees therefor, when they have been acknowledged or proved, and section 6934, R.C.M. 1921, provides that every conveyance of real property acknowledged or proved and certified and recorded, as provided by law, is constructive notice of the contents thereof to subsequent purchasers and mortgagees. It is apparent from these two sections that a deed in order to entitle it to record must be either acknowledged or proved in the manner provided by law.

Sections 6905 to 6929, inclusive, of the Revised Codes of Montana of 1921 relate to the taking of acknowledgments and the proving of the execution of instruments. From these sections it is apparent that the mere presence on the deed of the names of subscribing witnesses to the execution thereof, does not constitute such proof of the execution of the instrument as will entitle it to be recorded.

The execution of the instrument is not proved within the meaning of the statutes hereinbefore mentioned unless and until a certificate of proof is made in the manner provided in said sections or a judgment proving the instrument is obtained as is likewise provided for in said section.

It is therefore my opinion that a deed which bears no acknowledgment by the grantor but only the names of subscribing witnesses is not entitled to be recorded but that the instrument must be proved in one of the two alternative methods set forth in the statutes above mentioned before it is entitled to be recorded.

Very truly yours,  
L. A. FOOT,  
Attorney General.