

## Opinion No. 54-5975

June 21, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Richard F. Rowley District Attorney Ninth Judicial District Clovis, New Mexico

{\*433} This will acknowledge receipt of your letter of June 7, 1954 in which you ask whether the Clerk of the District Court may permit attorneys and abstractors to examine proceedings with respect to commitments for mental illness in view of the provisions of Section 17, Chapter 182, Laws of 1953.

The Section involved reads as follows:

"Section 17. Disclosure of Information.

a. All certificates, applications, records and reports made for the purpose of this Act and directly {\*434} or indirectly identifying a patient or former patient or an individual whose hospitalization has been sought under this Act shall be kept confidential and shall not be disclosed by any person except insofar

(1) as the individual identified or his legal guardian, if any (or, if he is a minor, his parent or legal guardian), shall consent, or

(2) as disclosure may be necessary to carry out any of the provisions of this Act, or

(3) as a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest.

b. Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to his current medical condition, to any members of the family of a patient or to his relatives or friends.

c. Any person violating any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than \$ 500 and imprisonment for not more than one year."

We believe that subsection "a (3)" limits such disclosure to disclosure upon court order in proceedings actually pending before the court upon a specific finding by the court that failure to disclose would not be in the public interest. The instances to which you refer in your letter do not involve such a situation. Ordinarily involved would be abstractors desiring to determine whether or not someone in the chain of title to a particular piece of land was sane or not at the date he conveyed the property or took some action with

respect to it. Until the question of his sanity became involved in a court proceeding concerning the land, the court would be powerless, in our opinion, to open the files.

We do not believe that this section prohibits a disclosure of information in the opening of files concerning commitments made under prior insanity statutes. You will note that the first portion of subsection "a" limits them to matters made for the purpose of "this Act" and concerning persons whose hospitalization has been sought "under this Act". The prior insanity statutes were specifically repealed by Section 27 of Chapter 182 and therefore the records of the Court concerning them would be open to public inspection.

We agree with you that such a conclusion may adversely affect substantial property rights in this State. This is a matter which should be called to the attention of the Legislature at the earliest possible opportunity. We do not believe that the Legislature would continue such a practice if the consequences were known. However, such action is within the power of the Legislature and we can find nothing in the Act indicating a different desire on the part of that body.

By: Walter R. Kegel

Assist. Attorney General