

Opinion No. 54-6065

December 28, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Beatrice B. Roach Secretary of State State Capitol Building Santa Fe, New Mexico

{*541} This office has received your request for opinion upon the "matter of the necessity for county clerks to maintain separate recordings on deeds and mortgages whether such records be by microfilm or otherwise," the question being raised by letter of inquiry from Mrs. Tom Farmer, County Clerk, Colfax County, New Mexico, which you have enclosed.

The pertinent statute on this matter is § 13-205, N.M.S.A., 1941, Compilation, now § 71-2-5, N.M.S.A., 1953. Said statute reads as follows:

"The records of deeds and of mortgages shall be kept in separate books."

The problem presented requires definition of the term "book" and ascertainment of legislative intent in relation thereto.

Webster's New International Dictionary, Second Edition, Unabridged, gives the following definition, among others, of the term "book":

"An assemblage of pages."

In **Scoville vs. Toland**, 21 Federal Cases, 863 at page 864, it is said:

"A 'book' in its popular sense is understood to be a volume, bound or unbound, written or printed."

Another definition is given in **United States vs. One Obscene Book Entitled "Married Love"**, (D.C.N.Y.) 48 Federal 2d, 821 at 823:

"I think that the proper view of the meaning of the word 'book' in title 19, U.S.C., § 1305 (19 USCA § 1305), is not merely a few sheets of paper bound together in cloth or otherwise, but that a book means an assembly or concourse of ideas expressed in words, the subject-matter which is embodied in the book, which is sought to be excluded, and not merely the physical object called a book which can be held in one's hands."

Thus, it is apparent from the above that the term "book" refers to either a physical object assembled in one unit or an assemblage of ideas or thoughts upon a particular subject. In one sense the term applies to matter which can be comprehended by the sense of

touch and/or that of sight. Used in the other sense comprehension requires the facility of mental processes. Thus, the term "book" used in the latter sense might require for containment of expression thereof many "books" as used in the first sense, that is, many separate and distinct assemblages of pages or volumes might be required to contain one assemblage of ideas or thoughts.

Thus, at the very least, it seems that the requirement that records of deeds and of mortgages be kept in separate books would be complied with, if kept in one volume only, by keeping all deeds together in one part of the volume and all mortgages together in another part of the volume.

However, looking at the object of regulation, i.e., keeping of records which are open to the general use of the public, it would seem that the Legislature intended that as simple a procedure as possible should be available for those seeking information therefrom, and that the public should have available for its use records easy to identify, handle and inspect. Certainly, public convenience is enhanced by providing a separate "assemblage of pages" containing deeds and a different "assemblage of pages" containing mortgages.

Further, the requirement that records of deeds and of mortgages be {^{*542}} kept in separate books is not a universal one among the states. 45 Am. Jur. 457. In those states where provisions are made for recording different instruments in different books, decisions have been reached holding that a particular instrument affords no notice unless recorded in the book provided for such instruments by statute, and this rule has been applied as between mortgages and deeds. 45 Am. Jur., 458; **Grand Rapids National Bank vs. Ford**, 143 Michigan, 402, 1906.

It is therefore the opinion of this office that the statute above quoted requires that county clerks keep record of deeds and of mortgages in separate and distinct books or volumes, and further that it matters not whether the records of deeds or mortgages therein be photographed, microfilmed, micro-photographed or reproduced on film or copied otherwise.

Trusting this is the information you desire, I am

By: Santiago E. Campos

Assist. Attorney General