

Opinion No. 56-6440

May 11, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. D. M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

You relate that:

"In connection with the survey made by the State Tax Commission in Lea County preparatory to installing a unit tax system in Lea County, a map of the county has been prepared. It appears that copies of this map are in demand for sale to oil companies, independent operators and other individuals."

Arising from this situation you ask for our opinion on the questions:

1. "May the County Clerk make copies of this map and sell them for a nominal fee with the revenues going to the county as clerk's fees?"
2. "If in your opinion the answer to the above question is in the affirmative would it be necessary for the Clerk to certify that the map was a true and correct copy of the official map so prepared?"

Regarding the map in question, Section 72-6-12 (12) N.M.S.A., 1953, in the third paragraph provides:

"The maps and plats of the lands, so surveyed by the commission or under its supervision, may be filed and placed on record, without cost, in the office of the county clerk of the county in which the lands are situated. . . ."

Thus, once placed on record the map in question is treated in the same manner as other records in the county clerk's custody, and it may be copied by the clerk as other public records and provided to the public upon payment of the fees prescribed by statute.

Your first question is thus answered in the affirmative with the qualification that the fees prescribed by statute are the proper ones to be charged and not those which the clerk may deem "nominal."

The fees which we feel are applicable to the subject map are as follows:

". . . for copying any order, record or paper, for every one hundred (100) words, ten cents (10c); . . ." Section 71-1-11, N.M.S.A., 1953.

Section 71-1-8 and Section 71-1-11, N.M.S.A., 1953, conflict on the amount to be charged for the clerk's certificate and seal. Section 71-1-8, provides that \$ 1.00 is the proper fee. Section 71-1-11, provides for \$.25. Both of these sections were re-enacted in the Code of 1865 and became effective the same day. Before re-enactment Section 71-1-8 had been passed subsequent in time to Section 71-1-11, and for this reason we deem Section 71-1-8 controlling. \$ 1.00 may be charged for certification and seal.

In addition, if the copy is certified, an additional \$.15 per page charge may be made. Section 15-39-6, N.M.S.A., 1953.

Regarding your second question, I can find nothing in the statutes which makes it mandatory that copies of public records in the custody of the county clerk be certified when issued unless the party desiring a copy requests certification.

". . . and he shall also deliver to any person who may demand it a certified copy of any record in his office, . . ." Section 15-39-6, N.M.S.A., 1953.

We trust the above answers your inquiries.

By: Santiago E. Campos

Assistant Attorney General