

Opinion No. 61-127

December 6, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

TO: Mr. Miguel C. Fietze, Jr., County Clerk, Dona Ana County, Las Cruces, New Mexico

QUESTION

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1. Is there any legal procedure whereby the following records may be destroyed:
 - (a) Purchase Vouchers
 - (b) County employee payment vouchers (1920-1950 period).
 - (c) Chattel mortgages which have been on file over six years.
 - (d) Receipt books of County Clerk which are more than four years old.
 - (e) Justice of the Peace criminal complaints in cases which have been disposed of four years or longer.
2. Is there any statutory provision for storing old probate case files somewhere other than at the County Clerk's office.

CONCLUSIONS

1. There is a statutory procedure for the destruction of obsolete County records.
2. No.

OPINION

ANALYSIS

Section 71-4-10, N.M.S.A., 1953 Compilation (P.S.) provides as follows:

"The following county records shall be deemed obsolete and may be destroyed: A: Purchase vouchers which are six years old; B. Chattel mortgages six years after the expiration of their term if the same shall have been duly released of record; C. Duplicate information reports, filed in the offices of county officials, including but not limited to

duplicate reports of the county treasurer, sheriff, county agricultural agents and county health officers, which are two years old."

This section then answers your question as to purchase vouchers and chattel mortgages.

The records mentioned above are not the only ones which may be destroyed by county officials. Section 71-4-11, N.M.S.A., 1953 Compilation (P.S.), provides as follows:

"Any official charged with the custody of any records and who intends to destroy those records, shall give notice by registered or certified mail to the state records administrator, state records center, Santa Fe, New Mexico, of the date of the proposed destruction and the type and date of the records he intends to destroy. The notice shall be sent at least sixty days before the date of the proposed destruction. If the state records administrator wishes to preserve any of the records, the official shall allow the state records administrator to have the documents by calling for them at the place of storage."

Prior to destroying any records under the authority of Section 71-4-11, supra, you will have to make a factual determination that the particular records are obsolete. This requirement is implicit in the title of the Act which reads as follows: "An Act Relating to Obsolete County Records . . .". You will also note that only records with which you are charged with custody may be destroyed pursuant to Section 71-4-11, supra.

County employee payment vouchers for the period 1920 through 1950 presumably can be considered obsolete, and since you are charged with their custody they can be destroyed after following the procedure set forth in Section 71-4-11. The same would apply to County Clerk receipt books which are more than four years old.

Sections 36-13-6 through 36-13-9, N.M.S.A., 1953 Compilation (P. S.), require justices of the peace to file complaints, warrants, final orders and official receipts with the County Clerk. While these records are not excluded from the provisions of Section 71-4-11, supra, and even though the court itself does retain a copy of each, this office would not advise you that these particular legal records be destroyed.

The County Clerk is by constitutional provision also the Probate Clerk. Article VI, Section 22. As such, the county clerk is required to keep a record of decedents' estates and other probate matters. We find no statutory provision for the storage of such probate files at a place other than the county clerk's office.