

Opinion No. 65-198

October 13, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Frank Bachicha, Jr., Assistant Attorney General

TO: Mrs. Johnnie Byrd, County Clerk, San Juan County, Aztec, New Mexico

QUESTION

QUESTIONS

1. Must the transcripts of judgment be recorded in a separate book?
2. May the transcripts of judgment continue to be recorded in the mortgage book?
3. What is the correct fee for recording a transcript of judgment?

CONCLUSIONS

1. Yes.
2. No.
3. One dollar and twenty-five cents (\$ 1.25) where the instrument is not photocopied; one dollar and seventy-five cents (\$ 1.75) for the first page and one dollar (\$ 1.00) for each additional page or portion thereof if the instrument is photocopied.

OPINION

{*323} ANALYSIS

Section 21-9-7 New Mexico Statutes Annotated, 1953 Compilation relates to the recording of transcripts of judgment. It appears to require that a separate book be kept for the purpose of recording transcripts as follows:

"21-9-7. RECORDING OF TRANSCRIPT. -- The county clerk shall record said transcript **in a book kept for the purpose** in his office, which book shall be in form like the aforesaid books to be kept by the clerks of the Supreme and district courts, with additional columns to show the dates of filing and recording." (Emphasis supplied).

Attorney General Opinion No. 6528, dated October 10, 1956, held that although transcripts of judgment could be recorded by making a photostatic copy thereof, these would have to be kept in a separate book as required by Section 21-9-7, supra. Nothing

stated herein, however, should be construed to affect the requirements for docketing a judgment by the district court clerks.

You have advised that your office has not followed the practice of recording the transcripts of judgment in a separate book. It is our opinion that such practice is erroneous and that the unequivocal language of Section 21-9-7, supra, requires that such transcripts be recorded in a separate book. Thus, the answers to your first two questions are yes and no, respectively.

The answer to your third question is found in Section 71-1-10, New Mexico Statutes Annotated, 1953 Compilation. It is our understanding that your office is collecting a recording fee of one dollar and seventy-five cents (\$ 1.75) for the first page of a photographed instrument, including transcripts of judgment, and one dollar (\$ 1.00) for each additional page of such photographed instruments. We believe such practice to be consistent with the above mentioned Section 71-1-10. Note that such section enumerates the fees to be charged for specific types of instruments **which are not photocopied**. After such enumeration the following appears:

"For each instrument recorded, and where the instrument is photocopied, the recording fee shall be one dollar seventy-five cents (\$ 1.75) for the first page and one dollar (\$ 1.00) for each additional page or portion thereof." (Emphasis supplied).

The above quoted portion of Section 71-1-10, supra, is applicable to your situation since all instruments recorded by your office are photocopied. Thus, you are to collect one dollar and seventy-five cents (\$ 1.75) for the first page and one dollar (\$ 1.00) for each additional page of all photographed instruments which are recorded. On the other hand, county clerks are to collect one dollar and twenty-five cent (\$ 1.25) for recording transcripts of judgment **which are not photocopied**.