Opinion No. 20-2481

February 9, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. A. A. Rivera, County Clerk and Recorder, Tierra Amarilla, New Mexico.

Instrument Not Properly Acknowledged Not Entitled to Recordation.

OPINION

We have your letter of the 5th instant, requesting advice from this office regarding the filing and recording of a contract for the sale of land which is not signed with the original signatures of the contracting parties, the signatures being typewritten, nor having been acknowledged, nor showing any indication of having been executed.

Section 4786, Code 1915, provides that,

"All deeds, mortgages, United States patents, and other writings affecting the title to real estate shall be recorded in the office of the County Clerk of the county or counties in which the real estate affected thereby is situated."

Section 4795, Code 1915, provides

"Any instrument of writing duly acknowledged and certified to shall be entitled to be filed and placed of record. Any instrument of writing not so acknowledged and certified to shall not be entitled to be filed and placed of record, nor considered

of record, though so entered."

In the case of Vorenberg vs. Bosserman, 17 N.M. 433, 130 Pac. 438, the Supreme Court of this state, in construing this section, held that a chattel mortgage not properly acknowledged is not entitled to record, and, if recorded, gives no constructive notice.

Under date of May 10, 1917, former attorney General H. L. Patton rendered an opinion to W. C. Zerwer, County Clerk at Clovis, holding that Mr. Zerwer was correct in refusing to file an instrument because the same was not acknowledged as required by law, and because the instrument did not have the effect of a mortgage or lien upon personal property.

In view of the foregoing, it is our opinion that the instrument which you mention and which is within the definition of a "writing affecting the title to real estate" is not entitled to be recorded, and that you would be justified in refusing to receive the same for recordation.