

**OPINION
45-239**

March 1, 1945 (OPINION)

REGISTER OF DEEDS

RE: Records - Removal and Destruction

I acknowledge your letter of February 26, with reference to Sections 11-1814 and 35-0410 of the Revised Code of 1943.

Under the authority of Section 11 1814, the register of deeds is authorized to remove and destroy all seed liens, labor liens, stallion liens, chattel mortgages, and threshing liens filed prior to January 1, 1937, in his office, which, by reason of the failure to renew the same by affidavit or otherwise, have become outlawed and no longer constitute liens upon the property mentioned or described therein. Such removal from the files of the register of deeds' office and destruction are to be had on or before January 1, 1944, or as soon thereafter as is conveniently possible. At the time of the destruction of these records, the register of deeds is directed to note on the margin of the index opposite the record of each instrument so removed and destroyed the date when the same was destroyed. Under the terms of Section 35-0410 of the 1943 Revised Code, any chattel mortgage filed under the law and renewed once becomes void as against all persons and shall be cancelled of record at the end of six years from the date of the filing of the original mortgage. Then the section further provides that all chattel mortgages or instruments of a like nature shall be kept on file in the office of the register of deeds for a period of three years after they have expired, and thereafter they may be removed from the files and stored for safekeeping. Section 11-1814 was enacted at the 1935 legislative session as Chapter 164. It became effective July 1, 1935. Section 35-0410 of the 1943 Revised Code was enacted as Chapter 167 of the 1943 Session Laws. In view of the fact that this section is the last enactment, insofar as the two sections conflict concerning chattel mortgages, it is the opinion of this office that the register of deeds should, insofar as chattel mortgages are concerned, comply with the terms of Section 35-0410, and when said chattel mortgages are removed from the files in accordance with said section, they should be stored for safekeeping as therein provided. we feel that, insofar as these two sections of the code are in conflict concerning the disposition of chattel mortgages, that the register of deeds should comply with Section 35-0410 of the 1943 Revised Code by complying with its terms rather than the terms of Section 11-1814. I believe that to be the proper and the safest method of handling the disposition of chattel mortgages.

It might also be argued that where the two statutes conflict as to the disposition of old chattel mortgages, the latest enactment upon the subject should prevail.

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Attorney General