

**OPINION
61-173**

November 6, 1961 (OPINION)

PUBLIC RECORDS

RE: Register of Deeds - Use of Microfilm

Re: Microfilming, Register of Deeds Office

This is in reply to your letter of October 27, 1961, concerning the above matter. You state the following facts:

The Register of Deeds of Burleigh County is anticipating the use of a microfilming machine in place of recording real estate transactions in the traditional recording books. The microfilming operations will reproduce in a miniature form the complete documents brought to the Register of Deeds office for filing and/or recording. It is anticipated that the recording books will not be used after the microfilming process is adopted.

We hereby request an opinion as to whether or not microfilming an instrument affecting the title to or possession of real estate, fulfills the requirements of recording under chapter 47-19 of the Century Code. Does microfilming the instrument and retaining it in a microfilm 'library' fulfill the requirements of 'recording', which means to transcribe or copy the instrument deposited with the Register of Deeds, so that a copy of the instrument is made a part of the permanent records of the office as set forth in *Northwestern Improvement Company v. Norris* 74 N.W.2d. 497? Will microfilming an instrument constitute constructive notice to all purchasers and encumbrancers under the provisions of chapter 47-19-19 of the N.D.C.C.?

Will microfilming the instrument fulfill the requirements set forth in chapter 11-18-01 of the N.D.C.C.?"

As you have noted in your letter, the provisions of chapter 47-19 require real estate transactions to be recorded in order to constitute notice of such transactions. Our Supreme Court in *Northwestern Improvement Company v. Norris*, supra, has defined "record" to mean to transcribe or copy the instrument deposited with the register of deeds so that a copy of the instrument is made a part of the permanent records of the office. See page 506 of the *Northwest Reporter*. "Transcribe" is defined by Webster's New Collegiate Dictionary as: "To write a copy of;" "Copy" is defined by the same source as: "an imitation or reproduction of an original work." It would, therefore appear that the microfilming process would come within the definition of the word "copy" since it is a reproduction of an original work.

We also note the provisions of section 11-10-19 of the North Dakota Century Code which provides:

USE OF PHOTOGRAPHY IN MAKING COUNTY RECORDS. Whenever the board of county commissioners shall deem it expedient to do so, photography may be used in the making of permanent county records. When permanent photographic or photostatic copies of any instrument, document, or decree which is required to be recorded are thus made, such copies may be filed and kept instead of the record books or records of instruments or documents required by any provisions of this code."

There appears to be little doubt but that photographic or photostatic copies of original documents are more accurate than copies made in longhand or by the typewriter. It is our understanding that microfilming is a photographic or photostatic process.

Insofar as the provisions of chapter 47-19 of the North Dakota Century Code are concerned, we note such chapter requires the Register of Deeds to maintain certain books for recording. We also note, however, that section 11-10-19, quoted above, specifically provides that photostatic or photographic copies may be filed and kept instead of the record books or records of instruments or documents required. The various indexes which the Register of Deeds is required, by statute, to maintain would, of course, still be required even though microfilm process is used for recording the instruments.

It is, therefore, our opinion that microfilming an instrument affecting the title to or possession of real estate fulfills the requirements of recording under chapter 47-19 of the North Dakota Century Code and that such process also satisfies the definition of recording as contained in *Northwestern Improvement Company v. Norris*, 74 N.W.2d. 497. It is our further opinion that the microfilming process will constitute constructive notice to all purchasers and encumbrancers under the provisions of section 47-19-19 of the North Dakota Century Code. Section 11-10-19 specifically authorizes the contemplated action.

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