

FILE



Subject

Corporations
Dealers Organization

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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

February 15, 1974

Opinion No. 74- 61

Mr. Charles Frickey
Decatur County Attorney
106 South Pennsylvania
Oberlin, Kansas 67749

RE: Abolition of requirement for corporate seal as it
pertains to mortgage releases executed by domestic
corporations.

Dear Mr. Frickey:

You have requested an opinion from this office interpreting the effect of K.S.A. 1973 Supp. 17-6003(g) and 17-6102(3) upon the provisions of K.S.A. 58-2318. The Kansas Legislature during the 1973 session amended certain portions of the Kansas Corporation Code. K.S.A. 1973 Supp. 17-6102(3) eliminates the requirement that a corporation must have a corporate seal. Further K.S.A. 1973 Supp. 17-6003(g) provides in pertinent part:

"(g) Whenever any corporation shall convey any lands or interests therein by deed or other appropriate instrument of conveyance, such deed or instrument shall be executed on behalf of the corporation by the president, vice-president or presiding member or trustee of said corporation; and such deed or instrument, when acknowledged by such officer to be the act of the corporation, or proved in the same manner provided for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds"

By virtue of these explicit statutory provisions it is clear therefore that a corporation no longer needs a corporate seal in order to convey any lands or interest therein by deed or other appropriate instrument. Whereas, K.S.A. 58-2318 on the other hand provides:

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" . . . All assignments and releases of mortgages by a corporation shall be valid when executed by the president, vice-president, secretary, cashier or treasurer of such corporation and attested, by its corporate seal." (emphasis added)

The patent contradiction between these statutes is the basis for your present inquiry: May a bank (or any corporation subject to the above cited statutes) execute a valid mortgage release without attesting to the instrument with its corporate seal?

The problem presenting itself here is determining which statute is controlling. Albeit the statutes may not be precisely in pari materia they nevertheless approach sufficiently the same purpose to allow an interpretation premised upon the approach employed by the Supreme Court in Clark v. Murray, 141 Kan. 533, 41 P.2d 1042 (1935). There the court cited with approval from 59 C.J. 1042 (Statutes §620):

"Statutes in pari materia, although in apparent conflict, should, so far as reasonably possible, be construed in harmony with each other so as to give force and effect to each, as it will not be presumed that the legislature, in the enactment of a subsequent statute, intended to repeal an earlier one, unless it is done so in express terms; nor will it be presumed that the legislature intended to leave on the statute books two contradictory enactments. But if there is an irreconcilable conflict, the latest enactment will control, or will be regarded as an exception to, or qualification of, the prior statute." [Cited now as 82 C.J.S. Statutes §368 (1953)]

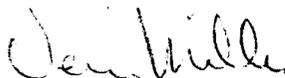
See also State ex rel. Parker v. Stonehouse Drainage District No. 1, Jefferson County, 152 Kan. 188, 102 P.2d 1017 (1940); Binger v. Board of Com'rs of Shawnee County, 144 Kan. 260, 59 P.2d 24 (1936); Harkrader v. Whitman, 142 Kan. 186, 53 P.2d 795 (1935).

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It is apparent from the 1973 amendments to the Kansas Corporation Code that the Legislature fully intended to permit a corporation to dispense entirely with a corporate seal. K.S.A. 17-3007, repealed in 1972, detailed specifically the requirements to be met by any deed or other appropriate instrument conveying land or any interest therein by a corporation. When K.S.A. 1973 Supp. 17-6003(g) was enacted in 1973, to restore to the corporation code similar procedural requirements, all reference to the use of the seal was omitted therefrom. To the extent that these recent enactments conflict with the requirement of attestation by a corporate seal found in K.S.A. 58-2318, which was enacted in 1911 and has remained unchanged since that time, we must conclude, on the basis of the cited cases above, that the 1911 requirement must be deemed to have been repealed to the extent that the 1972 and 1973 enactment of the corporation code conflict therewith. Accordingly, we conclude that when a corporation executes a mortgage release without attesting to it by a corporate seal, the release remains nonetheless valid, and that it may be properly filed for recording.

We hope this has answered your inquiry. Should you have any further questions please feel free to contact us.

Very truly yours,



VERN MILLER
Attorney General

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