Opinion No. 74-102

Lyndus A. Henry
Johnson County Counselor
Box 31-A
Olathe, Kansas 66061

Dear Mr. Henry:

You inquire concerning an opinion issued by this office to
Mr. Gary Nafziger, Jefferson County Attorney, dated June 21,
1973. He inquired what method or procedure should be followed
to refund a mortgage registration fee, or portion thereof, which
was found to have been erroneously collected. We advised that
any individual desiring repayment should submit an appropriate
request to the Board of County Commissioners to refund the fee.
You seek reference to statutory authority for making such re-
funds, or for the procedure to be followed in doing so.

There exists no express statutory authority for making such re-
funds. It has long been the position of this office, however, that claims for repayment or refund of improperly collected fees
should be made against the county, as indicated by the enclosed
opinion of Attorney General William Ferguson. This conclusion,
in our view, rests upon the elementary proposition that absent
statutory authority for collection of the fee in the first in-
stance, when it is subsequently determined to have been errone-
ously and improperly assessed and collected, the county has no
legal basis upon which to retain the unlawfully collected amount,
and must, perforce, repay the amount thus unlawfully collected.

The procedure to be followed is set out in the uniform procedure
for the payment of claims and other indebtedness by municipali-
ties, K.S.A. 1973 Supp. 12-105(a) and (b).
If you should have further questions, please do not hesitate to call upon us.

Yours very truly,

VERN MILLER
Attorney General

VM:JRM:jsm