

FILE

Subject

*Opinion  
Mortgage Registration*

Copy to



STATE OF KANSAS

*Office of the Attorney General*

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

VERN MILLER  
Attorney General

March 28, 1974

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 refunds, or for the procedure to be followed in doing so.

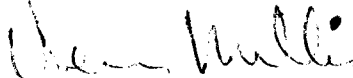
There exists no express statutory authority for making such refunds. It has long been the position of this office, however, that claims for repayment or refund of improperly collected fees should be made against the county, as indicated by the enclosed opinion of Attorney General William Ferguson. This conclusion, in our view, rests upon the elementary proposition that absent statutory authority for collection of the fee in the first instance, when it is subsequently determined to have been erroneously 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 municipalities, K.S.A. 1973 Supp. 12-105(a) and (b).

Lyndus A. Henry  
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If you should have further questions, please do not hesitate to call upon us.

Yours very truly,



VERN MILLER  
Attorney General

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