



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

March 19, 1975

Opinion No. 75- 122

Ms. Helen Jagers
Chairman Legislative Committee
Kansas Association of Register of Deeds
Saline County Register of Deeds
Salina, Kansas 67401

Dear Ms. Jagers:

You requested, in your letter of January 6, 1975, an opinion from this office concerning the following questions: (1) the length of time a K.S.A. 58-201 mechanic's lien remains effective; (2) whether certificates of value may be kept in the office of the county clerk; (3) whether county records may be destroyed after the same have been placed on microfilm.

By the reference in your letter to K.S.A. 58-202, I will assume your first question is concerned only with a K.S.A. 58-201 mechanic's lien on personal property since the Register of Deeds Office is the appropriate place to file such a lien and the effective length of other liens created under Chapter 58, is governed by specific provisions contained therein. In National Bond Investment Company v. Midwest Finance Company, 156 Kan. 531, 134 P.2d 639 (1943), the court stated that a lien created under the predecessor to K.S.A. 58-201 remained valid so long as the person claiming the lien retained possession or, upon parting with possession, filed a lien statement in the office of the Register of Deeds. Under the rationale of that decision, the lien would remain effective as long as there is possession or a filed statement on record.

The type of lien frequently arises as a result of either an oral or written contract. As such, different time periods govern as to when an action to foreclose must be brought. There would probably be little way for office personnel to discern the difference in attempting to decide when a lien was no longer within the applicable statute of limitations. If, as your letter

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indicates, the underlying purpose is to "clean house," the only procedure to use which safeguards against the future contingency of requiring the production of these documents is that outlined below for destruction of documents after the same have been micro-filmed. This insures production of the document while allowing the various registers of deeds to rid their offices of the cumbersome originals.

As to your second question, K.S.A. 58-2223(g) requires that before any deed or instrument providing for a transfer of title to real estate is recorded, the same must be accompanied by a certificate of value. These instruments are then to be retained for a two year period before their destruction. Examination of the statutes involved reveals no positive prohibition upon their transfer to the office of the county clerk. Although it is certain that these documents are to be initially located in the Register of Deeds Office since they must accompany any document transferring title to real estate, K.S.A. 58-2223a and 2223b each recognize the concurrent use of this document by the county clerk. If, as you state, the Register's Office makes no further use of these certificates after the initial transfer of title to any real property, this office has objection to their transfer into the custody of the county clerk only so long as that office is able to comply with the limitations imposed by K.S.A. 58-2223a and 2223b on their use and availability. These restrictions are to be followed despite K.S.A. 79-1412b which makes available for inspection by the public those records kept by the county clerk.

Your final question was concerned with the destruction of records after the same have been microfilmed. K.S.A. 19-250 provides that the board of county commissioners may by resolution authorize any county officer to microfilm or photograph any records within that officer's control. Once the records are properly microfilmed under the requirements of that statute, K.S.A. 19-253 vests the board of county commissioners with the authority to order their retention or destruction based upon their judgment as to the permanent value of the documents. Accordingly, county records may be destroyed only when the county commissioners so authorize. Therefore, if certain members of your organization wish to destroy the county records under their control, the proper procedure is to receive formal approval from the county board of commissioners. It should be noted that if the documents are over twenty years old, it will be necessary to comply with K.S.A. 19-254.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:kj