



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

May 28, 1975

Opinion No. 75-234

The Honorable Elwill Shanahan
Secretary of State
2nd Floor - State Capitol Building
Topeka, Kansas 66612

Attn: Mr. Sherman Parks

Dear Secretary Shanahan:

K.S.A. 75-415 states thus:

"The secretary of state is hereby made the custodian of all deeds to real estate now owned, or which hereafter may be acquired, by the state of Kansas, together with the abstracts of title thereto; and it shall be the duty of the secretary of state, and he is hereby required to safely keep and carefully preserve and file all deeds and abstracts of title so deposited with him as the property of the state of Kansas, and to list and keep a correct record of the property owned by the state, and to accredit to each governmental or institutional department of the state the real estate purchased or acquired for its special use."

From 1879 until 1975, K.S.A. 75-408 stated thus:

"Papers, records and documents in the office of the secretary of state shall not be permitted to be taken from his office, or from his possession or that of his clerks; but certified copies shall in all cases be given when required."

By section 1 of 1975 Senate Bill No. 560, the prohibition against removal was qualified, removal being permitted when such papers, records or documents can not be reproduced within the office of the secretary of state. Then and in that event,

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"The secretary of state shall establish procedures for the removal of any such papers, records and documents from the secretary of state's office for the purpose of reproducing the same."

You enclose a copy of a letter, dated May 14, 1975, from chief counsel for the Kansas Employment Security Division of the Department of Labor, requesting that his office be furnished with the abstract of the real property described therein, in order that the abstract may be brought to date for examination by attorneys for the Douglas County State Bank, of Lawrence, Kansas, to whom the property is to be transferred in exchange for other property specially constructed for the use of that agency in Douglas County.

In view of the restrictions pointed out in K.S.A. 75-408, as amended effective April 14, 1975, you inquire whether you are authorized to relinquish control of the abstract of title now in your possession by virtue of K.S.A. 75-455 for the purposes noticed in the letter from Mr. F. Duane Roberts. K.S.A. 75-408 is clear and unambiguous in its direction that "[p]apers, records and documents in the office of the secretary of state shall not be permitted to be taken from this office" Presumably, the "papers, records and documents to which this refers are "papers, records and documents" of which the secretary of state is by law the official custodian. Abstracts of title of state property are such documents, i.e., those which by law are placed in the custody of the Secretary of State. So long as the property remains state property, the Secretary of State is required "to safely keep and carefully preserve" the abstract of title of this property, under K.S.A. 75-415, as amended, and under K.S.A. 75-418, this document may not be taken from the office of the Secretary of State except for purposes of reproducing same when reproduction cannot be accomplished in the office, and such removal for purposes of reproduction shall be in accordance with procedures established by the Secretary for that purpose.

Accordingly, in accordance with the clear legislative pronouncement in K.S.A. 75-408, it is our opinion that the Secretary of State may not release the custody of the abstract of title of the property in question so long as it remains the property of the State, except for purposes of reproduction if the document cannot be reproduced in your offices.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

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