



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

September 18, 1975

ATTORNEY GENERAL OPINION NO. 75-370

The Honorable Elwill Shanahan
Secretary of State
2nd floor, Statehouse
Topeka, Kansas 66612

Re: K.S.A. 75-415, K.S.A. 75-408 as amended by Chap. 430,
Laws of 1975.

Synopsis: The Secretary of State may surrender an abstract of
title after the state no longer owns title.

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Dear Secretary Shanahan:

In a previous Opinion No. 75-234, dated May 28, 1975, this office expressed an interpretation of the two above statutes that the Secretary of State may not release custody of the abstract of title "as long as it remains the property of the state, except for purposes of reproduction if the document cannot be reproduced in your offices".

The property in question in that opinion was located in Douglas County, Kansas and was being sold by the state. We are now presented with a copy of a deed dated August 12, 1975, executed with the approval of this office, whereby the state of Kansas did convey said real estate to the Douglas County Building Corporation, Inc. with the covenant that the state was lawfully seized in its own right, of an absolute and indefeasible estate in fee simple.

We are now asked whether the Secretary of State, after the state conveys title to property and no longer owns the same, may under the above statutes then release custody to the buyer of the abstract of title.

In our opinion, the answer is yes.

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It is a necessary incident of every sale of real estate that the seller support the covenant of fee simple title by furnishing an abstract of title, or a policy of title insurance, and this is provided in the form contract of sale.

We note that K.S.A. 45-415 provides for the custody of deeds "now owned" by the State of Kansas, together with the abstracts thereto. The word "owned" is used a second time in that statute, it is reasonable to conclude that the legislature intended that when state ownership of property terminated, the duties of the Secretary of State pertaining to the preserving and filing of abstracts to such property also terminated, and that the abstracts should follow the property which the state has conveyed away.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/CJM/cgm