



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

February 5, 1976

ATTORNEY GENERAL OPINION NO. 76- 37

Leonard J. Dix
Rooks County Attorney
Rooks County Courthouse
Stockton, Kansas 67669

RE: K.S.A. 79-3101 et seq.

Synopsis: Where an instrument, which would assign all right, title and interest in an agreement for sale and purchase of real estate as collateral security for an indebtedness now due and for future advances, is offered to the Register of Deeds for recording, it is incumbent upon the Register of Deeds to require evidence to be produced as to 1) the contents of the agreement for sale and purchase, and 2) the contents of the agreement for additional indebtedness and future advances. K.S.A. 1975 Supp. 79-3102 requires the Register of Deeds to charge a registration fee, based on the amount of principal debt or obligation secured. To do this, she must be presented with all instruments incorporated by reference and which establish that debt or obligation. Further, if a registration fee has been paid on any portion of the debt previously, proper allowance must be made.

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Dear County Attorney Dix:

You submit the attached assignment of a real estate purchase contract dated November 20, 1975, and you ask if your Register of Deeds should record the instrument without collecting a mortgage registration fee on it.

In order to carry out her duties with reference to the collection of mortgage registration fees, as required by K.S.A. 1975 Supp. 79-3102, she must have complete knowledge of all additional instruments mentioned.

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There appears to be two indebtednesses involved:
a) an executory contract for the sale of the real estate described; and b) some notes made to the Stockton Production Credit Association. This contract is being assigned as "collateral and security" for the notes. But the "executory contract" itself is a security for the payment of indebtedness, as defined by K.S.A. 79-3101. If the real estate purchase contract has not heretofore been recorded and the registration fee collected, that registration fee must now be collected in full because this assignment places that contract a matter of record as a lien against the real estate listed. Secondly, if a registration fee has been collected on the real estate contract debt, but the notes, which this assignment will secure, create a greater indebtedness, then an additional registration fee must be collected on the assignment alone. A mortgage registration fee can be collected but once on a single indebtedness. Fourth National Bank v. Hill, 181 Kan. 683, 698, 314 P.2d 312 (1957). But it must be collected in full on every indebtedness secured by an instrument creating a lien on real estate before such instrument shall be recorded. The mortgage registration fee is a tax in lieu of all other ad valorem taxation. Meadowlark Hill, Inc. v. Kearns, 211 Kan. 35, 505 P. 2d 1127 (1973).

In our opinion, the instrument should not be recorded without the payment of a mortgage registration fee and to assess that fee the Register of Deeds should have before her all necessary instruments to ascertain the exact debt or obligation.

Very truly yours,



CURT T. SCHNEIDER
ATTORNEY GENERAL

CTS:CJM:gw