STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 15, 1976

ATTORNEY GENERAL OPINION NO. 76-283

Don Vsetecka
County Attorney
Finney County Courthouse
Garden City, Kansas 67846

RE: Records and Recordation, Photocopies. K.S.A. 1975 Supp. 58-2221, 58-2224, K.S.A. 58-2230, 60-467, 60-469, 58-2209, 58-2211.

Synopsis: All conveyances and other instruments affecting real estate must be signed by the grantor and acknowledged before an authorized public officer having a seal. A photocopy of an instrument purporting to convey an interest in real estate, but which does not have the original signature of the grantor, nor the original signature and seal of the officer acknowledging the instrument, cannot be recorded under the statutes.

* * *

Dear County Attorney Vsetecka:

You ask if photocopies of deeds, mortgages and other real estate records may be recorded by the Register of Deeds, or is it necessary that the original instrument be delivered for recordation.

In our opinion only original instruments signed by the grantor and acknowledged by a duly authorized public official under signature and seal, should be recorded.

All deeds or other conveyances of lands, or of any estate or interest therein, shall be subscribed by the party granting the same, K.S.A. 58-2209, and must be acknowledged before an authorized public official having a seal. K.S.A. 58-2211. These Kansas Laws remain unamended since 1868. K.S.A. 1975 Supp. 58-2221 must be read together with these prior laws.

In one early Kansas case, Kelley v. McBlain, 42 Kan. 764, 767 (1889), it was held that a copy of a tax deed which did not carry the seal of the acknowledging officer and recorded in that manner was insufficient proof and that such record of the deed was void.

Other statutes are pari materia to the statutory requirements of recording: K.S.A. 58-2230, which authorizes the Register of Deeds to certify copies of instruments on record, refers only to copies of "original" instruments. K.S.A. 1975 Supp. 58-2224 authorizes the Register of Deeds to bind into volumes photographic copies of recorded instruments. The original instrument is photocopied by the Register of Deeds, and then the original is returned to the person recording. Many county officers are now microfilming their records, K.S.A. 19-250, and may thereafter destroy "original" records. K.S.A. 19-253.

K.S.A. 60-267 provides that documentary originals are "best evidence". But a duly authenticated photocopy of the recorded original instrument filed of record is admissible. K.S.A. 60-469, and it then adds: "The introduction of such copy .... does not preclude admission of the original writing if it is still in existence." So, clearly, the Register of Deeds must record only properly executed original instruments. Otherwise, the matter of public notice of such recording, or its use in evidence, is subject to question.

We reaffirm our letter of June 12, 1972 to the Register of Deeds of Rooks County that the weight of authority is that only original instruments and not copies shall be filed with the Register of Deeds. In that opinion we cited 76 CJS RECORDS, Sec. 10, and 45 Am. Jur. RECORDS AND RECORDING LAWS Secs. 59 and 110.

We do not say that a photocopy of an original instrument cannot be recorded if the grantor actually signs such photocopy and the acknowledging officer actually signs such copy and imprints upon it his seal. In such case, the copy has in fact become an original.

Very truly yours,

CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw

LETTER, June 12, 1972, to Kenneth E. Buss, Register of Deeds, Stockton

Re: SAME—*Photostatic Copies of Oil and Gas Leases Cannot be Recorded*

You inquire as to whether or not a photostatic copy of an oil and gas lease can be recorded without the original being recorded.

76 C. J. S., *Records*, § 10, p. 118, states:

"Ordinarily only the original instrument and not a copy thereof is entitled to be recorded, but there is also authority that a 'testimonial' or 'second original' is entitled to record."

45 Am. Jur., *Records and Recording Laws*, § 59, p. 452 states:

"Subject to exceptions made in certain peculiar circumstances, only the original instrument is entitled to record, and therefor, a copy of a deed will not be admitted to effective record, even though it has endorsed on it a receipt signed by the grantor acknowledging that he has received a deed, of which it was a true copy, for the purpose of procuring it to be recorded."

Further, in § 110 it is stated:

"Copy of instrument—The recording of a copy of an instrument instead of the original which might itself have properly been recorded, is invalid if not authorized by statute, and the record so made is therefore not notice to third parties. Where, however, the instrument is such that it is necessary to record it in several different counties or states, it has been held that the record is sufficient to constitute notice if the original is carried to each of the offices in which the record is to be made and is compared by the recording officer with a copy left with him."

A thorough search of the Kansas statutes reveals no specific provisions for recording copies of instruments. The Kansas statutes provide for recording of instruments in K. S. A. 58-2221 and this statute provides that any instrument be in writing, and that it be approved or acknowledged and certified as prescribed in the Kansas statutes.

The weight of authority is that only original instruments and not copies shall be filed with the register of deeds. Therefore, it is our opinion that a photostatic copy of an oil and gas lease cannot be recorded without recording the original of that lease.

JTP