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January 2, 1979

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ATTORNEY GENERAL OPINION NO. 79- 1

Mr. Sherman A. Parks, Jr.  
Deputy Assistant - Legal Counsel  
Office of Secretary of State  
2nd Floor - State Capitol  
Topeka, Kansas 66612

Re: Limited Partnerships--Certificates--Execution

Synopsis: In the execution of a certificate forming a limited partnership under K.S.A. 56-123, a corporation which executes such a certificate as a general or limited partner by the signature of the president or vice-president need not have such signature attested by the secretary or assistant secretary of such corporation as required by K.S.A. 17-6003, because the latter section does not apply to filings under the Limited Partnership Act.

\* \* \*

Dear Mr. Parks:

You request my opinion concerning certain limited partnership certificates which are presented for filing with the Secretary of State pursuant to K.S.A. 56-123. Subsection (1) prescribes the steps necessary to the formation of a limited partnership. It commences thus: "Two or more persons desiring to form a limited partnership shall (a) sign and swear to a certificate . . . ."

You point out that some limited partnerships have been formed in Kansas which have one or more corporations as general or limited partners. However, the act, K.S.A. 56-122 *et seq.*, does not define the procedure which a corporation must follow when signing a certificate under K.S.A. 56-123 in the formation of a limited

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partnership. Thus, the question is raised whether a corporation must execute the certificate in accordance with K.S.A. 17-6003, a provision of the Kansas corporation code which is designed to prescribe a uniform procedure applicable to all corporate instruments. Subsection (a) prescribes thus, in pertinent part:

"Whenever any provision of this act requires any instrument to be filed with the secretary of state or in accordance with this section or act, such instrument shall be executed as follows:

(1) The articles of incorporation shall be signed by the incorporator or incorporators

. . . .  
(2) All other instruments shall be signed: (i) by the chairman or vice-chairman of the board of directors, or by the president or a vice-president, and attested by the secretary or an assistant secretary, or by such officers as may be duly authorized to exercise the duties, respectively, ordinarily exercised by the president or vice-president and by the secretary or assistant secretary of a corporation; or (ii) if it shall appear from the instrument that there are no such officers, then by a majority of the directors or by such directors as may be designated by the board . . . ."

This section prescribes a uniform procedure applicable to all corporate instruments required by the corporation code to be filed with the Secretary of State. The limited partnership act does not incorporate by reference this specific provision as governing the filing of certificates and the execution thereof by corporations. This uniform procedure is specifically applicable when and only when "any provision of this act [the corporation code] requires any instrument to be filed with the secretary of state or in accordance with this section or act."

When you and my first deputy discussed this question earlier, the tentative conclusion was reached that limited partnership certificates to which a corporation was a party should be executed in accordance with this section. Upon further consideration, however, it appears that K.S.A. 17-6003 cannot be so constructed to be deemed to control the execution and filing of limited partnership certificates under that separate act, K.S.A. 56-122

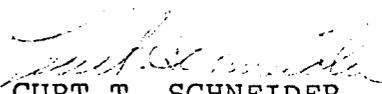
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et seq. Thus, in my judgment, the requirement of K.S.A. 17-6003 that the signature of the president or vice-president be attested by the secretary or an assistant secretary of the corporation does not apply to certificates filed under K.S.A. 56-123.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj