



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

January 5, 1979

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CUR
AT

overruled by
13 Kan App 2d
509 (1987)

ATTORNEY GENERAL OPINION NO. 79- 10

Mr. Jack R. Euler
Attorney at Law
137 South Main
Troy, Kansas 66087

Re: Taxation--Mortgage Registration--Industrial Revenue
Bond Lease And Agreements

Synopsis: Mortgage and trust indentures entered into incidental to industrial revenue bond issues and submitted for registration to the appropriate register of deeds are not subject to the mortgage registration fee provided under K.S.A. 79-3102.

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Dear Mr. Euler:

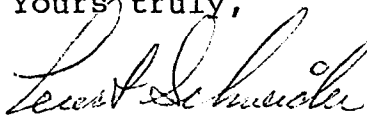
As attorney for the city of Elwood you request my opinion concerning the application of the mortgage registration tax to certain instruments filed with the Doniphan County Register of Deeds. You advise that the city has issued industrial revenue bonds pursuant to K.S.A. 12-1740 *et seq.*, to finance certain construction projects. Standard vehicles for issuing such bonds include a lease agreement and indenture of trust and mortgage. Apparently, the register of deeds has required the payment of the statutory mortgage registration fee on an indenture of trust and mortgage. You ask specifically whether such fee is authorized.

We have examined the lease agreement and the indenture of trust and mortgage supplied with your letter request. They appear to differ slightly from the standard format usually followed for such instruments which are essential to industrial revenue bond

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that similar mortgage and trust indentures such as here concerned enjoy an exemption from the mortgage registration tax authorized via K.S.A. 79-3102, by virtue of the express exemption provided in K.S.A. 12-1746.¹ As we earlier concluded, the registration fee (or tax) amounted to a tax on the bonds since the bonds represented the amount to be taxed and that inasmuch as the bondholders were the ultimate mortgagees under the general scheme of such industrial revenue bond issues, such a tax if allowed, would effectively defeat the very purpose of the exemption: that the bonds should be free from all state taxes save inheritance taxes. That status is clearly and broadly spelled out. It is apparent that the legislature could easily have provided another exception to the exemption as it did for inheritance taxes. They did not and have not since our opinion of May 22, 1975. Accordingly, we are not now inclined to abandon that conclusion.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JPS:kj

1. See, X Opinion of the Attorney General, Opinion No. 75-231, dated May 22, 1975, addressed to Mr. John E. Fierro.