



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 18, 1979

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 79- 145

Mr. Kim D. Ramey
Seward County Attorney
415 North Washington
Liberal, Kansas 67901

Re: Fees and Salaries--Filing Fees--When Fees to be
Collected

Synopsis: The Register of Deeds has the discretionary power to postpone collection of the filing fees required by the provisions of K.S.A. 1978 Supp. 28-115. However, should the Register of Deeds fail to collect any such fees, the amount thereof may be deducted from his or her salary.

* * *

Dear Mr. Ramey:

You request our opinion as to whether a register of deeds may file a document listed in K.S.A. 1978 Supp. 28-115 prior to receiving the filing fee specified in said statute.

You explain that it has been the practice of the Seward County Register of Deeds to file those documents listed in said statute when they are presented to her for filing by local abstract companies and other locally established businesses. However, rather than collecting the filing fee on each document at the time it is filed, the register of deeds keeps a record of all such filings and, at the end of each month, sends the abstract company or other business a bill reflecting the aggregate filing fees due the county.

Mr. Kim D. Ramey
Page Two
July 18, 1979

Your inquiry stems from the fact the county auditor has informed the register of deeds that this practice violates the requirements of 28-115 and, therefore, should be discontinued.

K.S.A. 1978 Supp. 28-115 specifies the fees to be charged by the register of deeds for filing various documents. The statute, then, in relevant part, provides:

"All fees enumerated in this section, except those charged for the filing of releases of tax liens under the internal revenue laws of the United States, shall be due and payable before the register of deeds shall be required to do the work, and if the register of deeds shall fail to collect any of the fees herein provided for, the amount of such fees at the end of each quarter shall be deducted from the salary herein provided for." (Emphasis added.)

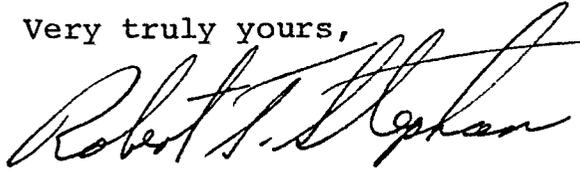
In our judgment, the above-emphasized language of the statute makes it clear that the register of deeds is not required to record any document specified in 28-115 until the specified fees have been paid. However, in our opinion, the statute does not require that the fees be collected before the document is filed. Rather, the language implies that the register of deeds has the authority to postpone collection of such fees, although, if the register fails to collect any such fees, "the amount of such fees at the end of each quarter shall be deducted" from the register of deeds' salary.

The foregoing conclusion should not be construed as eliminating the statutory duty of the register of deeds, pursuant to K.S.A. 79-3102 (as amended by L. 1979, ch. 317, §1), to require payment of the mortgage registration fee prior to receiving and filing a mortgage for record. That statute specifically provides that the mortgage registration fee shall be paid "[b]efore any mortgage of real property . . . shall be received and filed for record" The mortgage registration fee, however, is not a filing fee. It is a tax. See Meadowlark Hills, Inc. v. Kearns, 211 Kan. 35 (1973); Berger v. Bierschbach, 201 Kan. 740 (1968); and Missouri Pacific Railroad Co. v. Deering, 184 Kan. 283 (1959), and the cases cited therein at 286. Consequently, the requirements relative to the collection of said tax are not to be construed as controlling in regard to the collection of filing fees.

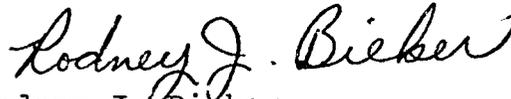
Mr. Kim D. Ramey
Page Three
July 18, 1979

Thus, it is our opinion that the register of deeds has been granted the discretion to postpone collection of the filing fees required by the provisions of K.S.A. 1978 Supp. 28-115. However, should the register of deeds fail to collect any such fee, the amount thereof may be deducted from his or her salary. Thus, we are of the opinion that the monthly billing system utilized by the Seward County Register of Deeds is not unlawful under the provisions of K.S.A. 1978 Supp. 28-115.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:gk