



STATE OF KANSAS

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October 5, 1979

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ATTORNEY GENERAL OPINION NO. 79-223

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

Re: Personal and Real Property--Conveyance of Land--  
Recordation of Instruments Conveying or Affecting  
Real Estate

Synopsis: Only original instruments (including photocopies  
appropriately executed) conveying real estate or  
interests in real estate, subscribed and acknowl-  
edged as provided by law, may be recorded by the  
Register of Deeds. (Affirming Letter Opinion  
dated June 12, 1972, and Attorney General Opinion  
No. 76-283.)

There is no requirement that a corporate seal be  
affixed to lease agreements executed by a corpora-  
tion and subsequently tendered for recordation.

Kansas statutes do not prescribe a time limit within  
which instruments of conveyance must be acknowledged  
and recorded. Thus, such instruments may be acknowl-  
edged and recorded at any time after their execution.

\* \* \*

Dear Mr. Dix:

You have submitted for our review copies of instruments--a lease,  
a trust agreement, and an amendment to the trust agreement--ten-  
dered for filing with the Rooks County Register of Deeds for  
recording pursuant to K.S.A. 58-2221. You ask three questions  
pertaining to the authority of the Register of Deeds to record  
these instruments:

Mr. Leonard J. Dix  
Page Two  
October 5, 1979

(1) Is the Register of Deeds authorized to record copies of instruments?

(2) Is the Register of Deeds authorized to record lease agreements executed by a corporation even though such agreements lack a corporate seal?

(3) Is the Register of Deeds authorized to record instruments acknowledged several years after the apparent date of execution?

In answer to your first question, we affirm the conclusion reached by former Attorney General Vern Miller in a letter opinion dated June 12, 1972. The Attorney General determined that only original instruments conveying real estate or interests in real estate, subscribed and acknowledged as provided by law, may be recorded by the Register of Deeds.

Former Attorney General Curt Schneider, in Attorney General Opinion No. 76-283, also affirmed General Miller's conclusion. General Schneider modified the earlier opinion in one significant respect, however, and we agree with that modification. He added:

"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."

(Copies of the above-referenced opinions are enclosed for your consideration.)

Secondly, we find no requirement in Kansas law that a corporate seal be affixed to lease agreements executed by a corporation and subsequently tendered for recordation in the office of register of deeds. Kansas corporations are not required to have a corporate seal. See K.S.A. 17-6102(3) and Kansas Comment (3). Notably, the authors of Kansas Practice Methods state that corporate lease agreements must be signed by the president or other authorized officer of the corporation [see K.S.A. 17-6003(g)], and they recommend that the agreement "should also be attested by the secretary of the corporation and the corporate seal should be affixed if it has one." Kansas Practice Methods, §424D. (Emphasis added.)

Mr. Leonard J. Dix  
Page Three  
October 5, 1979

Lastly, we find that Kansas statutes do not prescribe a time limit within which an instrument of conveyance must be acknowledged and recorded after execution. K.S.A. 58-2211 provides that acknowledgments must be taken "before some court having a seal" or an authorized public officer. K.S.A. 58-2213 prescribes the form of the certificate of acknowledgment, but neither that statute nor K.S.A. 58-2211 fix a time limit within which instruments must be acknowledged after the date of execution. As a general proposition,

"[u]nless a statute specifies the time within which instruments must be acknowledged, it is not material when the ceremony is performed. It is necessary only that the acknowledgment be taken after the execution of the instrument and during the time the instrument is effective. Even though the acknowledgment is made after the lapse of a considerable period of time, the ceremony relates back to, and will be deemed effectual from, the time when the instrument was executed. But such subsequent acknowledgment cannot affect rights which may have accrued in favor of innocent third persons intervening the execution of the instrument and the taking of the acknowledgment." 1 Am.Jur.2d Acknowledgments, §24.

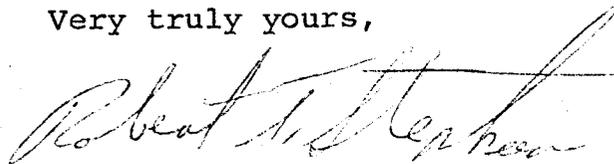
Moreover, K.S.A. 58-2221 makes no provision for a time limit within which instruments must be recorded after execution. The statute provides only that instruments conveying or affecting real estate "proved or acknowledged, and certified in the manner hereinbefore prescribed, may be recorded in the office of register of deeds of the county in which such real estate is situated." (Emphasis added.) Further, we note that

"[w]here the statute does not prescribe the time within which a deed shall be recorded, it may be recorded at any time after its execution, even after the death of the grantor." 26 C.J.S. Deeds, §77.

Mr. Leonard J. Dix  
Page Four  
October 5, 1979

In summary, we conclude that the Register of Deeds has no authority to record the photocopies of instruments in question since only original instruments (and photocopies appropriately executed) may be recorded. It is of no consequence that corporate officers failed to affix a corporate seal to the lease agreement in question; such instruments may be recorded without a corporate seal. Likewise, since the Kansas recording statutes do not prescribe a time limit within which deeds and other instruments of conveyance must be acknowledged and recorded, the Register of Deeds may record a properly acknowledged instrument at any time after the date of its execution.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Steven Carr  
Assistant Attorney General

RTS:WRA:SC:gk

Enclosures: Attorney General Letter Opinion of June 12, 1972  
Attorney General Opinion No. 76-283

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