STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

March 10, 1981

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

ATTORNEY GENERAL OPINION NO. 81-66

The Honorable Joe Warren
State Senator, Thirty-Second District
State Capitol, Room 136-N
Topeka, Kansas 66612

Re: Corporations -- Corporate Instruments -- Execution of Deeds or Other Instruments of Conveyance

Synopsis: The statutory requirements for the execution of deeds and other instruments for the conveyance of a corporation's real property or an interest therein are prescribed by K.S.A. 17-6003(g). As long as there is compliance with such requirements, provisions in the corporation's bylaws requiring execution of such instruments by officers of the corporation in addition to those specified in said statute are permissible. However, failure to comply with these bylaw requirements does not, as a general rule, affect the validity of a conveyance made in compliance with the statutory requirements. Cited herein: K.S.A. 17-6003, K.S.A. 1980 Supp. 17-6009, G.S. 1868, ch. 23, §38.

* * *

Dear Senator Warren:

You have inquired as to the conveyance of lands or interests therein by corporations. Specifically, you are interested in knowing the legal requirements regarding the corporate officers who must execute such conveyances.

Relevant to your inquiry are the following provisions of subsection (g) of K.S.A. 17-6003:

> "Whenever any corporation shall convey any lands or interests therein by deed or other appropriate instrument of conveyance, such

> deed or instrument shall be executed on behalf of the corporation by the president, vice-president or presiding member or trustee of said corporation; and such deed or instrument, when acknowledged by such officer to be the act of the corporation, or proved in the same manner provided for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds . . . . Corporations likewise shall have power to convey by an agent or attorney so authorized under letter of attorney or other instrument containing a power to convey real estate or any interest therein, which power of attorney shall be executed by the corporation in the same manner as herein provided for the execution of deeds or other instruments of conveyance."

From the foregoing, it is apparent that a deed or other instrument of conveyance, or a power of attorney authorizing the execution of either, must be executed and acknowledged on behalf of a corporation by one of the specified corporate officers, viz., the president, a vice-president or the presiding member or trustee.

Although K.S.A. 17-6003(g) provides a direct response to your specific question, it is apparent from our conversation regarding this matter that there are two ancillary issues of concern to you. One issue arises from the situation where the grantee under a deed or other instrument of conveyance, wherein a corporation is the grantor, requests that such deed or instrument be executed on behalf of the corporation by a corporate officer or officers in addition to those specified in K.S.A. 17-6003(g). While the grantee in this situation might refuse to enter into the transactions unless the deed or instrument is executed by the additional officers of the corporation, we are aware of no legal authority which would compel the corporation's acquiescence to the grantee's demands. Thus, in our judgment, this is strictly a matter to be resolved by agreement of the parties.

The second issue arises from the situation where a deed or instrument of conveyance is executed on behalf of a corporation in compliance with K.S.A. 17-6003(g), but does not comply with additional requirements imposed by said corporation's bylaws for the execution of corporate instruments, in general, or for the execution of deeds and other instruments of conveyance, in particular. The question that arises is whether a deed or instrument of conveyance executed on behalf of corporation under these circumstances is valid.

In addressing this issue, we note initially that we are aware of no Kansas case specifically construing subsection (g) of K.S.A. 17-6003. Moreover, even though the provisions of this subsection had their origin in Section 38 of Chapter 23 of the General Statutes of 1868, there also is a dearth of cases construing these provisions prior to their codification in 17-6003. However, of the few instances in which these provisions have been judicially construed, we note that in Allen v. Brown, 6 Kan. App. 704 (1897), the court stated that "authorities are agreed that in making conveyances of real estate corporations must follow the method laid down in the statute." Id. at 706. To the same effect is Detmer v. Salinger, 101 Kan. 701, 705 (1917).

As we read these cases, they require that the statutory requirements must be fulfilled, but we do not construe them as precluding additional requirements being imposed by the bylaws. Bylaws, after all, merely provide the groundrules for the internal management of the corporation. As prescribed by K.S.A. 1980 Supp. 17-6009(b), a corporation's "bylaws may contain any provision, not inconsistent with law or with the articles of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights and powers or the rights or powers of its stockholders, directors, officers or employees." (Emphasis added.)

Thus, where the bylaws of a corporation require that deeds or other instruments conveying real property owned by the corporation, or any interest therein, be executed by officers of the corporation in addition to those specified by K.S.A. 17-6003(g), it may be questioned whether such bylaw requirements are "inconsistent" with the statutory requirements regarding the execution of such instruments. In our judgment, however, no such inconsistency obtains. As long as these instruments are executed by one of the officers specified in 17-6003(g), and in the manner prescribed therein, these statutory requirements have been fulfilled, and the fact that additional officers subscribe such instruments does not operate in contradiction thereof.

Conversely, we do not believe that, as a general rule, failure to satisfy these bylaw provisions, as long as there is compliance with the statute, impairs the validity of the conveyance. Here, we have formed our opinion without benefit of pertinent Kansas case law, but have relied upon decisions from other jurisdictions.

The general rule in the majority of jurisdictions is that the bylaws of a corporation affect only the members of that corporation and its directors and those third persons who, in dealing with the corporation, have actual knowledge or are legally bound to

take notice of the bylaws of that corporation. Bankers Trust Co. v. McCloy, 109 Ark. 160, 159 S.W. 205 (1913); Iowa-Missouri Grain Co. v. Powers, 198 Iowa 208, 210, 196 N.W. 979, 33 A.L.R. 1268 (1923); Bank of Holly Springs v. Pinson, 58 Miss. 421, 435 (1880).

In Dempster Mfg. Co. v. Downs, 126 Iowa 80, 101 N.W. 735 (1904), the court stated that bylaws are imposed for the management and control of the corporate affairs and are not usually intended for strangers who do not subject themselves to their influence. 101 N.W. at 735, 736. The court in First National Bank v. Briggs, 69 Vt. 12, 37 A. 231 (1894) carried this concept further by saying: "Strangers are not bound to know bylaws which are merely provisions for the government of a corporation, and notice of them will not be presumed." 37 A. at 234.

Consequently, a third person dealing with the corporation without knowledge of its bylaws cannot be legally bound by them. Ashley Wire Co. v. Illinois Steel Co., 164 Ill. 149, 157, 45 N.E. 410 (1896); Uline Loan Co. v. Standard Oil Co., 45 S.D. 81, 185 N.W. 1012, 1012, 27 A.L.R. 585 (1921); Kelly, Glover & Vale, Inc. v. Heitman, 220 Ind. 625, 635, 44 N.E. 2d 981 (1942); Bank of Holly Springs v. Pinson, 58 Miss. 421, 436, 38 AM Rep. 330 (1880). Although there is some authority to the contrary, this statement has been given force in most courts as the general rule. With respect to the instant situation, the application of this rule in two cases are worthy of note. In American Steel Export Co., Inc. v. White and Associates, Inc., 224 App. Div. 659, 229 N.Y.S. 41 (1928), the rule was applied thusly:

> "Where a bylaw of a corporation requires specific authorization of indorsements by its officers, but such bylaw has not been brought to the attention of one dealing with the officers, who act within the scope of their authority in regard to the business of the corporation in making indorsements, such person is not affected by such bylaw."
> 229 N.Y.S. at 42.

Also, we believe the following statement of the South Dakota Supreme Court is relevant:

> "Byláws limiting the authority of an officer to enter into a contract for the sale of land are not binding upon a purchaser dealing with such corporate officer in ignorance of the officer's apparent authority." Uline Loan Co. v. Standard Oil Co., supra, 185 N.W. at 1012.

Finally, it should be noted that these principles have been qualified in some jurisdictions, where the courts have found that the grantee or purchaser of corporate property had actual knowledge of the bylaws requirements or was charged by law with knowledge thereof. See, e.g., Parent v. Bank of Washington, 10 Pet. 596, 9 L. Ed. 547, 614 (1836). However, without benefit of pertinent Kansas case law, we are unable to speculate whether Kansas courts would apply similar principles in considering the validity of transactions conveying corporate property.

Therefore, based on these authorities, it is our opinion that third persons dealing with a corporation as strangers and at arm's length are unaffected by the corporation's bylaws, unless such persons are charged by law with knowledge thereof. Thus, as long as there has been compliance with the requirements of K.S.A. 17-6003(g), the failure to comply with a corporation's bylaws regarding the execution of deeds or other instruments conveying the corporation's real property, or an interest therein, does not affect the validity of such conveyance.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

W. Robert Alderson

W. Robert Alderson
First Deputy Attorney General

RTS:WRA:hle