



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL  
2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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

August 2, 1982

Mr. Samuel L. Schuetz  
Brown County Attorney  
Box 240  
Hiawatha, Kansas 66434

In Re: AG 82-164

Dear Mr. Schuetz:

This opinion is written with the realization that some documents that are required to be filed may be for the purpose of harrassment and have no legal validity. In such an event the remedy cannot come from a refusal to file, but under such circumstances the harrassing party or parties may be subject to legal action and money damages.

Very truly yours,

Robert T. Stephan  
Attorney General

RTS:naw/m



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ATTORNEY GENERAL OPINION NO. 82- 164

Samuel L. Schuetz  
Brown County Attorney  
Box 240  
Hiawatha, Kansas 66434

Re: Personal and Real Property--Conveyances of Land--  
Recordation of Instruments Affecting Real Estate

Synopsis: A register of deeds is required to file of record a written instrument whereby real estate may be affected. Such filing can properly be refused only if the instrument contains apparent errors, or is not proved or acknowledged, and certified in the manner prescribed by law, or the register of deeds has been directed by a court not to file the instrument. Of course, a register of deeds also may refuse to file instruments that clearly do not affect real estate, or where the law requires some act, such as payment of the mortgage registration fee, before the instrument may be received and filed of record. Cited herein: K.S.A. 58-2221.

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Dear Mr. Schuetz:

You seek an opinion concerning the authority of the Brown County Register of Deeds to refuse to file of record certain written instruments which are tendered for filing by persons who object to the monetary policy and system of the United States government. These are the people who refuse to pay taxes or private debts with Federal Reserve Notes, and who insist that the only "lawful money" of the United States is gold and silver coin.

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Recently, a person holding this belief tendered several written instruments for filing in the office of the Brown County Register of Deeds. Although the instruments are incapable of being described precisely, said instruments purport to impose "a particular Common Law Lien the object of which action is to enable the Demandant to secure money damages and exercise his Civil and Constitutional Rights." The instruments contain a caption similar to that of a legal action and are styled "Demandant," i.e., the monetary system objector, versus "Respondant." The instruments also contain the statement: "NOTICE IS HEREBY GIVEN THAT THE RESPONDENT(S) OWN(S) THE FOLLOWING REAL PROPERTY." Thereafter follows a legal description of real property. Then the instrument states: "(This lien is not dischargeable for 100 years and cannot be extinguished due to Demandant's death whether accidentally or purposely, or by my heirs, assigns or executors.) Payment at Law of \$\_\_\_\_\_ (Silver or Gold Coin)." A number is placed in the blank and the instrument is signed by the "Demandant." Finally, the instrument concludes with the statement that the instrument is subscribed and sworn to before a notary public, and is signed by a notary public.

You ask whether the Register of Deeds can refuse to file such instruments.

While we believe the filing of such spurious and legally unfounded instruments might well serve as the basis for legal action by the "Respondant" against the "Demandant," we are constrained to conclude that the Register of Deeds should not be placed in the position of having to determine which instruments should be recorded and which should not, absent judicial instruction.

In regard to written instruments tendered for filing in the office of register of deeds, K.S.A. 58-2221, in part, provides:

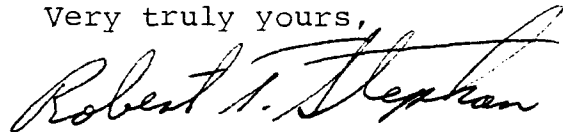
"Every instrument in writing that conveys real estate, any estate or interest created by an oil and gas leases, or whereby any real estate may be affected, proved or acknowledged, and certified in the manner hereinbefore prescribed, may be recorded in the office of register of deeds of the county in which such real estate is situated: Provided, It shall be the duty of the register of deeds to file the same for record immediately, and in those counties where a numerical index is maintained in his or her office the register of deeds shall

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compare such instrument, before copying the same in the record, with the last record of transfer in his or her office of the property described and if the register of deeds finds such instrument contains apparent errors, he or she shall not record the same until he or she shall have notified the grantee where such notice is reasonably possible."  
(Emphasis added.)

Thus, except in the case of "apparent errors," or a court order to the contrary, it is the duty of the register of deeds to file of record every written instrument, pursuant to which real estate may be affected, which is proved or acknowledged, and certified in accordance with the provisions of K.S.A. 58-2211 et seq. Consequently, it is our opinion that a register of deeds can properly refuse to file a written instrument, whereby real estate may be affected, only if the instrument is not proved or acknowledged, and certified in the manner prescribed by law, or the register of deeds has been directed by a court not to file the instrument. Otherwise, the register of deeds has the duty to file the instrument. Of course, a register of deeds also may refuse to file instruments which clearly do not affect real estate, or where the law requires some act, such as payment of the mortgage registration fee, before an instrument may be received and filed of record.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
Rodney J. Bieker  
Assistant Attorney General

RTS:BJS:RJB:jm