



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 50

Robert H. Gale, Jr.
Hamilton County Attorney
211 North Main
P. O. Box 66
Syracuse, Kansas 67878

Re: Taxation -- Mortgage Registration -- Property in
Two or More Counties; Apportionment of Fee

Synopsis: K.S.A. 79-3105 provides that when a mortgage covers property in two or more counties, the entire mortgage registration fee due thereon shall be paid to the register of deeds and treasurer of the county where it is first presented for recording. These county officials are then required to apportion the mortgage registration fee, in proportion to assessed valuation, and pay the proportionate shares to the other counties. A division of the fee by the mortgagee is accordingly improper, and a register of deeds may decline to accept for filing a mortgage under such circumstances. Cited herein: K.S.A. 1982 Supp. 79-3102, K.S.A. 79-3105, 79-3107.

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Dear Mr. Gale:

As County Attorney for Hamilton County, Kansas, you request our opinion on a matter involving K.S.A. 79-3105. That statute concerns the handling of mortgage registration fees when property encumbered is located in more than one county. You inquire whether the practice of one company in dividing up the fees which are due, then forwarding them on to the respective counties, is permitted by the terms of the statute.

K.S.A. 79-3105 was enacted in 1925, and has not since been amended. The statute is brief, and states, in full:

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"When a mortgage covers property situated in two or more counties, the registration fee herein provided for shall be paid to the register of deeds and county treasurer as hereinbefore provided, of the county where it is first presented for record, and the county treasurer so receiving such fee shall apportion the same among the counties in which the real property is situated, in proportion to its assessed valuation, and promptly pay over such proportionate amounts to the respective county treasurers. Should any contention arise as to the division and distribution of such registration fees, the same shall be referred to the state director of property valuation, who is hereby authorized and directed to decide the same, which decision shall be final." (Emphasis added.)

The statute was applied in the cases of Shawnee County Comm'rs v. Wright, 147 Kan. 542 (1938) and Shawnee County Comm'rs v. Wright, 153 Kan. 19 (1941). There, Kansas Power and Light Co. paid a mortgage registration fee of \$75,000 to the register of deeds in Shawnee County. The treasurer of that county subsequently distributed proportionate shares of the money to 34 other Kansas counties, and it was the way the shares were determined, rather than the validity of the procedure itself, which was at issue.

In your situation, an oil company owns realty and interests therein located in Hamilton, Commanche and Barber counties. Following the grant of a second mortgage on the property by the company to an Ohio bank, the Hamilton County Register of Deeds received two copies of the mortgage agreement for filing (in both the real estate and Uniform Commercial Code records) and a check purporting to represent the county's proportionate share of the mortgage registration fee imposed by K.S.A. 1982 Supp. 79-3102. In view of the plain language of K.S.A. 79-3105, such a procedure, in our opinion, is improper, and would justify the return by the register of deeds of the mortgage and the fee.

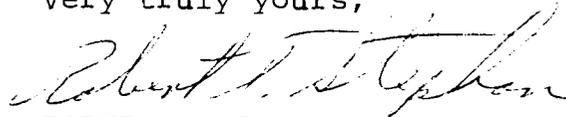
K.S.A. 79-3105 provides that the registration fee on a mortgage covering property in two or more counties is to be paid, to the register of deeds and treasurer of the county where it is first presented for recording, and thereafter the division into proportionate shares of the registration fee is to be done by these county officials, not the mortgagee. While the end result may be the same, the share due each county may not always be clear, and the appeal mechanism provided by the statute (i.e., to the state director of property valuation) could be frustrated if each county accepted the check

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made out to it in ignorance of those being sent to the others. See, e.g., Shawnee County Comm'rs v. Wright (I), supra. While we would not go so far as to say that the mortgage is invalid (assuming it has already been filed), to properly comply with the statute the fee should be divided only after it is received in full by a single county. Henceforth, such filings should not be accepted, as the fee is not in proper form. K.S.A. 79-3107.

In conclusion, K.S.A. 79-3105 provides that when a mortgage covers property in two or more counties, the entire mortgage registration fee due thereon shall be paid to the register of deeds and treasurer of the county where it is first presented for recording. These county officials are then required to apportion the mortgage registration fee, in proportion to assessed valuation, and pay the proportionate shares to the other counties. A division of the fee by the mortgagee is accordingly improper, and a register of deeds may decline to accept for filing a mortgage under such circumstances.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJs:JSS:hle