



STATE OF KANSAS

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May 11, 1983

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ATTORNEY GENERAL OPINION NO. 83- 71

Jeffrey A. Chubb
Montgomery County Attorney
County Courthouse
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Re: Taxation -- Listing and Valuation of Real Estate --
Duty of County Clerk to Execute and Record Plat

Counties and County Officers -- Register of Deeds --
Duty to Refuse to Record Plat Prior to Payment of
Real Estate Taxes

Synopsis: Pursuant to K.S.A. 79-405 and 79-406, a county clerk has the duty to execute a plat of any subdivision or lot when such is owned by two or more persons and the legal description of the property is insufficient for purposes of assessment and taxation. Upon completion, such plat is to be filed for record with the register of deeds, and thereafter has the same effect as a plat executed and filed by the owner or owners of property. However, in the event that real estate taxes are due and owing on property platted by a county clerk pursuant to the above-referenced statutes, K.S.A. 19-1207 proscribes the register of deeds from recording the plat until taxes on the property are paid. In the case where a clerk has prepared a plat but taxes remain unpaid, the plat may not be filed due to K.S.A. 19-1207, but may be used only for the purposes originally intended, i.e., assessment and taxation. Cited herein: K.S.A. 19-1207, 79-405, 79-406, K.S.A. 1982 Supp. 79-408, 79-1803.

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Dear Mr. Chubb:

As County Attorney of Montgomery County, you request our opinion concerning a potential conflict in the duties of two county officials. Specifically, you inquire whether the county clerk's duties under K.S.A. 79-405 and 79-406 conflict with those of the register of deeds under K.S.A. 19-1207. The former concerns the filing of plats by the clerk when such are inadequate or missing, while the latter sets forth the responsibilities of the register of deeds as to the acceptance and recording of plats.

K.S.A. 79-405 states as follows:

"Whenever any subdivision of land of forty acres or less, or any lot or subdivision, is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels thereof cannot be made sufficiently certain and accurate for the purpose of assessement and taxation without noting the metes and bounds of the same, the county clerk shall cause to be made and recorded, a plat of such tract or lot, with its several subdivisions, as herinbefore provided." (Emphasis added.)

K.S.A. 79-406, which is part of the same act as the former statute, states in pertinent part:

"Whenever any subdivision of land, as specified in the preceding section, shall have been divided and is owned in severalty by two or more persons, and the owners thereof have failed and neglected to execute and file for record a plat thereof, the county clerk shall by mail notify all of such owners residing within this state and demand the execution and recording of a plat. If such owners, when so notified, fail and neglect for thirty days after the issuance of such notice to execute and file a plat for record, the county clerk shall cause on to be made, making any survey necessary therefor. Said plat shall be signed and acknowledged by the county clerk, who shall certify that he or she executed it by reason of the failure of the owners named to do so, and file it for record, and when so filed it shall have the same effect as if executed, acknowledged and recorded by the owners." (Emphasis added.)

The above statutes were applied in the case of State ex rel. v. City of Edgerton, 201 Kan. 274 (1968), where it was held that they had the precise effect intended by their plain language, i.e., the clerk may file a plat of a subdivision or the lots therein for tax purposes, with the filing treated the same as if done by the owners. We agree with this interpretation, as you did in your letter to us.

The other statute of interest, K.S.A. 19-1207, states:

"(a) The register of deeds shall also keep a large, well-bound book, in which shall be platted all maps of towns, villages or additions to the same within the county, together with the description, acknowledgment or other writing thereon. The register shall keep an index to such book of plats, which index shall contain the name or names of the proprietor or proprietors of such town or village, or addition and the name of the town, village or addition. No register of deeds shall be bound to perform any of the duties required to be performed by this act, for which a fee is allowed, unless such fee has been paid or tendered.

"(b) The register of deeds shall not record any plat unless such plat is accompanied by a receipt from the county treasurer for all real estate taxes due and owing on land to be platted." (Emphasis added.)

The possible conflict you present is created by subsection (b), which would apparently prevent a plat prepared by the clerk from being filed if unpaid real estate taxes were disclosed.

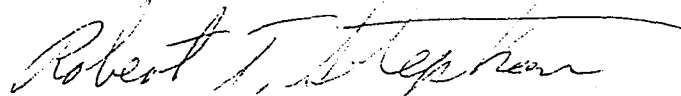
In our opinion, the main intent of K.S.A. 79-405 and 79-406 is to allow the county clerk to possess accurate information about a subdivision or lots therein for the purpose of preparing the real estate assessment rolls and the county tax rolls. See K.S.A. 1982 Supp. 79-408 and 79-1803. Of course, a plat is a document concerning real property, and is used for many purposes besides the preparation of the assessment and tax rolls, such as zoning, subdivisions, etc. Hence, the legislature has prescribed the requirement that any plat be filed with the register of deeds. However, whether a plat is prepared by the county clerk or by the property owner does not exempt it from the universal requirement of K.S.A. 19-1207(b), which is one of many measures designed to assist in the collection of taxes and to assure that, before owners may benefit from having an accurate plat on file, they must have paid the taxes due on the property.

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As this benefit should not alternatively be obtained through the actions of the clerk, it would be our conclusion that once the clerk prepares the plat for tax purposes, he or she has fulfilled the purpose of K.S.A. 79-405 and 79-406. State ex rel. v. City of Edgerton, supra. While the plat should be presented to the register of deeds for filing, and the same should be filed if taxes have been paid, such is not the case if taxes have not been paid. In the latter event, the register of deeds is precluded from filing the plat, pursuant to the prohibition in K.S.A. 19-1207. A contrary result could encourage the non-payment of taxes, since the owner would secure in a round-about way what could not be done directly.

In conclusion, therefore, it is our opinion that, pursuant to K.S.A. 79-405 and 79-406, a county clerk has the duty to execute a plat of any subdivision or lot when such is owned by two or more persons and the legal description of the property is insufficient for purposes of assessment and taxation. Upon completion, such plat is required to be tendered for filing with the register of deeds, and, if filed, thereafter has the same effect as a plat executed and filed by the owner or owners of property. However, in the event that real estate taxes are due and owing on the property platted, K.S.A. 19-1207 proscribes the register of deeds from recording the plat until such taxes are paid. In the case where a clerk has prepared a plat, but taxes remain unpaid, the plat may not be filed due to K.S.A. 19-1207, but may be used only for the purposes originally intended, i.e., assessment and taxation.

Very truly yours,



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RTS:BJS:JSS:hle