



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 85- 3

Vic Miller
Director of Property Valuation
Fifth Floor, State Office Building
Topeka, Kansas 66625

Re: Real and Personal Property -- Conveyances of
Land -- Recording of Instruments

Synopsis: In the absence of a statute to the contrary, a register of deeds lacks authority to allow changes to be made in the real estate records of the county in order to correct errors made in original instruments that were properly recorded by the register of deeds. If the parties to a recorded instrument discover an error in the original instrument, a document containing the correct information should be prepared and recorded.

The register of deeds is an elected county officer whose duties are prescribed by law. No other officer or entity is charged with the responsibility of supervising the activities of the register of deeds. However, like the actions of any other public officer, the actions of a register of deeds are subject to review by the courts and the electors of the county. Cited herein: K.S.A. 19-1204, 58-2221.

* * *

Dear Mr. Miller:

You explain that your office has received complaints from county appraisers that the registers of deeds in their counties have been allowing errors to be corrected in deeds recorded in their office

without notifying other county officials of such changes. This action has resulted in problems in the preparation of the real estate assessment rolls and in the proper appraisal of real property in these counties. Due to these problems, you seek our opinion on whether the register of deeds possesses the authority to allow changes to be made in the real estate records of the county, and if the appraiser has any authority to require the register of deeds to notify the appraiser of any changes that are made. You also inquire whether some officer or entity is charged with the duty of supervising the activities of the register of deeds.

We have reviewed the provisions of chapter 19 of the Kansas Statutes Annotated, relating to registers of deeds, and the provisions of chapter 58, concerning the recording of instruments conveying or affecting real property, and find no authority therein for a register of deeds to allow changes to be made in the records maintained in his or her office. In addition, we find no Kansas case which has either approved or disapproved of such activity. However, in 76 C.J.S. Records §25, it is stated:

"[A] record cannot be altered so as to show anything not in the instrument recorded at the time of the original record; and, if at the time of the original record the instrument was correctly copied, the officer cannot subsequently alter the record, even though there was a mistake in the original instrument and the alteration of the record is made by consent and on the written request of the parties." (Footnotes omitted.)

Also, we note the case of Nelson, Curtis & Nelson v. Bridgeman, 152 La. 190, 92 So. 855 (1922), in which the court was required to determine whether a clerk had the authority to alter a recorded deed, due to an alleged mistake in the description of the property that was to be conveyed. The court concluded that no such authority existed and stated: "If parties desire to make a correction, a correction deed should be prepared and, after its execution, should be recorded in the conveyance records. The correction then would be properly made." 92 So. at 857.

We believe the rule announced in Bridgeman is consistent with the current Kansas statutes which concern the recording of deeds and the duties of the register of deeds. Under K.S.A. 58-2221, only those instruments in writing, which are proved or acknowledged and certified as prescribed in article 22 of chapter 58, and which convey or affect real property or concern an interest in an oil or gas lease may be recorded in the real estate records of the register of deeds' office. Instruments that are not proved or acknowledged and certified in accordance with the requirements

of law are not entitled to be recorded. See Horney v. Buffenbarger, 169 Kan. 342 (1950), Fisher v. Cowles, 41 Kan. 418 (1889), and Meskimen v. Day, 35 Kan. 46 (1886). It is required that acknowledgements be made before some proper officer. (See K.S.A. ch. 58, art. 22.) Where an instrument is changed and is not re-executed and re-acknowledged, the original certificate of acknowledgement is rendered incorrect. The altered instrument would not be the instrument acknowledged or proved before the officer who issued the certificate of acknowledgement on the original, unaltered instrument.

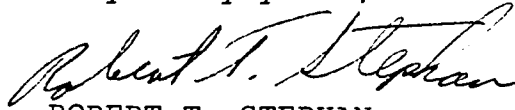
It is clear, then, that the law places a duty upon registers of deeds to record those instruments which the law authorizes to be recorded. Further, under K.S.A. 19-1204, the register of deeds is required to "safely keep and preserve all the books, records, deeds, maps, papers and microphotographs deposited or kept in his office." (Emphasis added.) To allow deeds in his or her office to be changed is inconsistent with a register's duty to "safely keep and preserve" those deeds. Accordingly, based upon the considerations stated above and in the absence of a statute authorizing such activity, we are of the opinion that a register of deeds has no authority to allow changes to be made in the real estate records of the county. If parties to a recorded instrument discover an error in the original instrument, a document containing the correct information should be prepared and recorded. If the procedure prescribed above is followed, those county officials who utilize the real estate records of the county to prepare the real estate assessment rolls and appraise the real estate of the county for property tax purposes could note any corrections made in the information provided in the real estate records and compile the correct information needed to perform their duties.

Finally, in regard to your inquiry concerning supervision of a register of deeds in the performance of his or her duties, we note the register of deeds is an elected county officer whose duties are prescribed by various laws. See K.S.A. 19-1201 et seq. and 58-2221 et seq. The responsibility of performing the duties of this office are imposed solely upon the officer. No other officer or entity is charged with the responsibility of supervising the register's activities as far as the recording of instruments is concerned. As a result, in the absence of a statute to the contrary, a county appraiser could not require a register of deeds to notify the former's office of any corrections made. Of course, like the actions of any other public officer, the actions of a register of deeds are subject to review by the courts [See, e.g., State ex rel. Stephan v. Board of Lyon County Comm'rs, 234 Kan. 732 (1984) and State ex rel. v. Mowry, 119 Kan. 74 (1925)] and the electors of the county.

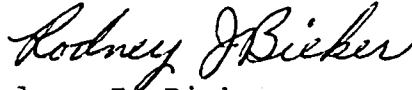
In summary, it is our opinion that, in the absence of a statute authorizing such activity, a register of deeds lacks authority to allow changes to be made in the real estate records of the county. If the parties to a recorded instrument discover an error in the original instrument, a document containing the correct information should be prepared and recorded.

It is further our opinion that the register of deeds is an elected county officer whose duties are prescribed by law. No other officer or entity is charged with the duty of supervising the activities of the register of deeds. However, like the actions of any other public officer, the actions of a register of deeds are subject to review by the courts and the electors of the county.

Very truly yours,



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