



STATE OF KANSAS

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March 8, 1988

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ATTORNEY GENERAL OPINION NO. 88- 33

Mr. Joseph W. Snell
Executive Director
Kansas State Historical Society
120 W. 10th
Topeka, Kansas 66612

Re: Frauds, Statute of -- Statute of Frauds -- Loans of
Goods and Chattels

Synopsis: K.S.A. 33-104 applies to any governmental or
private possessor, who is not otherwise precluded,
seeking to establish ownership of and title to
unclaimed goods and chattels. Cited herein:
K.S.A. 33-104; K.S.A. 1987 Supp. 77-201
Thirteenth; 1988 House Bill No. 2946.

* * *

Dear Mr. Snell:

As Executive Director for the Kansas State Historical Society
you request our opinion on the applicability of K.S.A. 33-104
to the Kansas Museum of History and other state, local and
privately operated museums. We understand that this request
is made in light of 1988 House Bill No. 2946 which establishes
another statutory procedure specifically applicable to
property in the possession of museums.

Chapter 33 of the Kansas Statutes contains the statute of
frauds. This is a common designation for the rule that
characteristically seeks to close the door to frauds and

perjuries. Blacks Law Dictionary 595 (5th Ed. 1979).
K.S.A. 33-104 states:

"Where any loan of goods and chattels shall be pretended to have been made to any person with whom (or those claiming under him) possession shall have remained for the space of five years, such goods and chattels shall be deemed the property of the person having had such possession, unless a reservation of the right of such goods and chattels shall have been made to the lender in writing, and such writing shall have been recorded within six months from the time of making such loan, in the register's office for the county where one or both of the parties shall then have resided." (Emphasis added).

K.S.A. 33-104 allows "any person" to claim ownership pursuant to the restrictions and provisions contained in the statute. K.S.A. 1987 Supp. 77-201 Thirteenth extends the definition of person to include bodies politic and corporate, unless such construction would be inconsistent with the manifest intent of the legislature. See generally, City of Kansas City v. Board of County Comm'rs, 213 Kan. 777, 780 (1974). The intent of K.S.A. 33-104 appears to be to provide a means by which title to unclaimed personal property can be quieted. (Statutory disposition of unclaimed real property is set forth in the adverse possession statutes. See K.S.A. 58-2208, 58-2247, 60-503, 60-1003.) We do not find this intent to be inconsistent with the application of K.S.A. 33-104 to governmental entities as well as private entities.

Thus, pursuant to K.S.A. 1987 Supp. 77-201 Thirteenth, bodies politic, and agencies of those bodies may be considered a person under K.S.A. 33-104. A museum operated by such a body politic may be considered an agency. Therefore, such museums may claim goods and chattels pursuant to that statute. Furthermore, K.S.A. 33-104 clearly applies to individual persons, and thus groups of persons. It is therefore our opinion that K.S.A. 33-104 applies to any governmental or private possessor, who is not otherwise precluded, seeking to establish ownership of and title to unclaimed goods and chattels.

By this opinion we do not presume to encroach on legislative discretion in this area. Legislators may alter, clarify,

pre-empt or abolish the applicability of statutes. However, it is our opinion that 1988 House Bill No. 2946 merely establishes a second means, other than K.S.A. 33-104, by which museums, governmental and private, may quiet title on unclaimed goods and chattels.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas