



STATE OF KANSAS

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August 14, 1989

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ATTORNEY GENERAL OPINION NO. 89- 101

Vernon L. Steerman
Osborne County Attorney
Courthouse, 2nd Floor
Osborne, Kansas 67473

Re: Fees and Salaries -- Fees in All Counties and
Salaries in Certain Counties -- Fees of Register of
Deeds; Recording Deeds and Lis Pendens for County

Synopsis: Registers of deeds are generally empowered to
charge the fees authorized by K.S.A. 1988 Supp.
28-115 to any entity for which the listed services
are provided. The county and other governmental
entities are not exempt from such fees except where
specifically provided by the statute. Cited
herein: K.S.A. 1988 Supp. 28-103; K.S.A. 28-104;
K.S.A. 1988 Supp. 28-115.

* * *

Dear Mr. Steerman:

As Osborne County Attorney, you request our opinion
regarding whether a county register of deeds is legally
empowered to assess and collect recordation fees from
governmental entities. Specifically, you ask whether the
register of deeds for Osborne county may charge fees to the
county for recording sheriff's deeds transferring title of
realty to the county under K.S.A. 79-2804, and for recording
lis pendens forfeiture litigation initiated by the county
under K.S.A. 65-4135 et seq.

The authority to charge fees is granted to county registers of
deeds under K.S.A. 1988 Supp. 28-115, which provides in part:

"The register of deeds shall charge and collect the following fees:

"For any filing or service provided for in the uniform commercial code, the amount herein provided, shall be charged and collected. No fee shall be charged or collected for any filing made by the department of revenue as required under the provisions of the Kansas inheritance tax act, and amendments thereto."

The language of the statute does not specify whether a county register of deeds may charge his or her own county for recordation services performed for the county. It also does not indicate whether a register of deeds may charge fees to other governmental entities. The statute merely states that the listed fees "shall be" charged and collected. On its face, this language appears broad enough to allow the register of deeds to charge fees to any entity, whether public or private, for which the listed services are provided.

It is significant that the statute contains only one express exception to this general authority to charge fees. The statute states that "no fee shall be charged or collected" for any filing made by the department of revenue under the inheritance tax laws. "Where express exemptions are made, the legal presumption is that the legislature did not intend to save other cases from the operation of the statute. Thus, the rule generally applied is that an exception in a statute amounts to an affirmation of the application of its provisions to all other cases not excepted. . . ." 73 Am.Jur.2d, Statutes, § 316 (1974); Director of Taxation v. Kansas Krude Oil Reclaiming Co., 236 Kan. 450, 458 (1984). In accordance with this principle, we conclude that the express exemption noted above was the only case in which the legislature intended not to apply the register of deed's general authority to charge fees.

Further support for this conclusion can be found in the statutes authorizing county clerks and treasurers to charge fees. Those statutes provide that "in no case shall any of the above fees be charged to the county." K.S.A. 1988 Supp. 28-103; K.S.A. 28-104. The legislature's failure to include such a proviso in the language referring to registers of deeds suggests that the legislature did not intend to exempt counties from the required fees.

A possible explanation for this difference is that registers of deeds were historically compensated differently than county

clerks and treasurers. The latter were paid salaries for compensation, and were required to turn over all fees collected to the county general fund. G.S. 1909, ch. 40, §§ 3656 to 3660. Registers of deeds, on the other hand, were allowed to keep a portion of the fees collected as compensation. G.S. 1909, ch. 40, § 3670. Therefore, any fees they charged to the county would have gone directly toward compensating them for the services performed.

In 1913, the legislature amended the statutes to make registers of deeds salaried officials like county clerks and treasurers. The amendment also provided that all fees collected by registers of deeds were to be paid into the county general fund. 1913 Session Laws, ch. 197, §§ 14 and 15. However, the amendment did not include a proviso exempting counties from such fees. We are unable to ascertain whether the legislature's failure to provide such an exemption was an oversight or intentional. However, "no intent may be imputed to the legislature in the enactment of a law other than such as is supported by the face of the law itself. The courts may not speculate as to the probable intent of the legislature apart from the words. A statute is to be taken, construed, and applied in the form enacted." 73 Am.Jur.2d, Statutes, § 196 (1974); Phillips v. Vieux, 210 Kan. 612, 617 (1972).

Therefore, under the present language of K.S.A. 1988 Supp. 28-115, it would appear counties and other governmental entities are not generally exempt from the fees charged by registers of deeds. The fees listed in the statute must be charged to all entities for which the services are provided, except where the statute expressly provides otherwise.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General