



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91-87

Wayne R. Tate
Stevens County Attorney
P.O. Box 250
209 E. Sixth St.
Hugoton, Kansas 67951-0250

Re: Public Health -- Uniform Vital Statistics Act --
Disclosure of Records; Death Certificates;
Recordation with County Register of Deeds

Laws, Journals and Public Information -- Records
Open to Public -- Certain Records Not Required to
be Open; Death Certificates; Recordation With
County Register of Deeds

Synopsis: K.S.A. 1990 Supp. 65-2422 does not mandate the
closure of death certificates which have been filed
with the office of register of deeds for the
purpose of terminating a life estate or joint
tenancy. K.S.A. 58-501 contemplates the provision
of notice to the public as a result of such filings
and authorizes, but does not require, filing
alternative evidence of death. Cited herein:
K.S.A. 19-1201; 19-1204; 45-215; 45-217; K.S.A.
1990 Supp. 45-221, as amended by L. 1991, ch.
149, § 11; K.S.A. 58-501; 58-2221; 58-2222; K.S.A.
1990 Supp. 59-2286; 65-2412; 65-2422; 65-2422d;
K.A.R. 28-17-1; 28-17-3.

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Dear Mr. Tate:

As Stevens county attorney you request our opinion on whether death certificates, recorded with the county register of deeds for the purpose of terminating a life estate or a joint tenancy in real estate, are closed records. You state that you have reviewed Attorney General Opinions No. 88-164, 86-145, 85-74, 84-101 and 79-95, and that, while these opinions concern the vital statistic records, none directly address the issue raised. You indicate that you believe that once a party has voluntarily filed a death certificate in the office of register of deeds, in order to terminate a life estate or joint tenancy, that death certificate becomes an open record.

In a July 12, 1991 letter to this office, the state registrar, Dr. Lorne A. Phillips, informs us that he believes that K.S.A. 65-2422 prohibits the register of deeds from preparing and releasing copies of death certificates in their files. Dr. Phillips also provides us with policy arguments for protecting the confidentiality of death certificates and information contained therein, and suggests that, in lieu of filing a copy of a death certificate, a register of deeds should file a form attesting to the fact that they have viewed a certified copy of the death certificate proving fact of death.

K.S.A. 45-215 et seq., the Kansas open records act (KORA), declares all public records [as defined by K.S.A. 45-217(f)] open unless otherwise mandatorily or permissibly closed by law. A death certificate filed with the office of register of deeds meets the definition of a public record and must therefore be open unless otherwise closed by law. K.S.A. 1990 Supp. 45-221, as amended by L. 1991, ch. 149, § 11, discusses the closure of records and provides in pertinent part:

"(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

"(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law,

state statute or rule of the Kansas
supreme court to restrict or prohibit
disclosure."

The state registrar relies upon K.S.A. 1990 Supp. 65-2422 as authority requiring the closure of death certificates filed with the register of deeds' office. That statute was amended twice in 1990 and appears in the 1990 supplement to the Kansas Statutes Annotated as 65-2422 and 65-2422d. The closure provisions in both versions of this statute state:

"(a) The records and files of the division of health pertaining to vital statistics shall be open to inspection, subject to the provisions of this act and rules and regulations of the secretary. It shall be unlawful for any officer or employee of the state to disclose data retained in vital statistical records, except as authorized by this act and the secretary, and it shall be unlawful for anyone who possesses, stores or in any way handles vital statistics records under contract with the state to disclose any data contained in the records, except as authorized by law.

. . . .

"(c) The state registrar shall not permit inspection of the records or issue a certified copy of a certificate or part thereof unless the state registrar is satisfied the applicant therefor has a direct interest in the matter recorded and the information contained in the record is necessary for the determination of personal or property rights. The state registrar's decision shall be subject, however, to review by the secretary or by a court in accordance with the act for judicial review and civil enforcement of agency actions, subject to the limitations of this section." (Emphasis added).

K.S.A. 1990 Supp. 65-2412 discusses the procedures whereby the original death certificate is filed with the state registrar. K.A.R. 28-17-1 et seq. address retention and

care of vital statistic records by local registrars. The statutory and regulatory procedures for registering a death do not mandate participation by the register of deeds' office. Local vital statistic registrars are compensated for assistance pursuant to K.A.R. 28-17-3, and thus, are acting under contract with the state. K.S.A. 1990 Supp. 65-2422 would therefore apply to such local registrars. However, we are not examining a filing that occurs pursuant to vital statistic procedures, statutes or regulations. A county register of deeds is not a state officer or employee. Moreover, in the situation presented for our review, the death certificate comes to the register of deeds office outside of any contract with the state to store or handle vital statistics records. Death certificates are ordinarily filed with the register of deeds by private individuals wishing to determine property rights and establish a clear chain of title.

K.S.A. 19-1201 et seq. create and define many of the duties assigned to the office of register of deeds. These duties include custody and recordation of certain documents. K.S.A. 19-1204. Documents filed in the office of register of deeds largely concern title to or interests in property. K.S.A. 58-2221 states:

" Every instrument in writing that conveys real estate, any estate . . . or whereby any real estate may be affected . . . may be recorded in the office of the register of deeds. . . . [I]t shall be the duty of the register of deeds to file the same for record immediately, and in those counties where a numerical index is maintained in his or her office the register of deeds shall compare such instrument, before copying the same in the record, with the last record of transfer in his or her office of the property described and if the register of deeds finds such instrument contains apparent errors, he or she shall not record the same until he or she shall have notified the grantee where such notice is reasonably possible. . . ." (Emphasis added).

The purpose of recording documents affecting property with the register of deeds is to provide notice to the public of any

transaction or matter that may affect title to the property. See K.S.A. 1990 Supp. 58-2222; Halliburton Co. v. Board of Jackson County Commissioners, 12 Kan.App.2d 704, 707 (1988); Attorney General Opinions No. 84-48, 85-3 and 87-104; 26 C.J.S. Deeds § 71 et seq. (1956).

K.S.A. 58-501 discusses tenancy in common and joint tenancy and provides for the filing of certain records as evidence of the death of a joint tenant:

"When a joint tenant dies, a certified copy of letters testamentary or of administration, or where the estate is not probated or administered a certificate establishing such death issued by the proper federal, state or local official authorized to issue such certificate, or an affidavit of death from some responsible person who knows the facts, shall constitute prima facie evidence of such death and in cases where real property is involved such certificate or affidavit shall be recorded in the office of the register of deeds in the county where the land is situated." (Emphasis added).

See also K.S.A. 1990 Supp. 59-2286, discussing termination of life estates and estates in joint tenancy. Thus, pursuant to K.S.A. 58-501, individuals wishing to provide notice that a death has terminated some interest in real estate may choose to file the documents described in K.S.A. 58-501. This statute permits the filing of a death certificate in order to give notice of an event affecting title to real property. To close such a record would prevent the intended notice. To require the register of deeds to refuse filings of such documents or independently file an alternative affidavit asks the register of deeds to ignore this statute.

Kansas title standards, adopted and published by the Kansas Bar Association, concern certain practices with regard to proof of title when someone dies and someone else becomes the owner of real property because of that death. These standards recommend that, whenever possible, the death certificate or affidavit of death be filed. See Kansas Title Standards 12.4, 12.6 and 12.8.

K.S.A. 19-1204 and K.S.A. 58-2221 require registers of deeds to file certain records unless the records do not otherwise meet statutory requirements. K.S.A. 58-501 allows notice of a change in an interest in real property upon the filing of (1) a certified copy of letters of testamentary or of administration (if a death is administered or probated), (2) a certificate establishing such death issued by the proper federal, state or local official (the death certificate record in question), or (3) an affidavit of death from some responsible person who knows the facts. This authority provides the interested party with alternatives to filing a death certificate. The third alternative is suggested by the state registrar, Dr. Phillips. However, we find nothing in this or other statutes that require or even allow a register of deeds to refuse to file a death certificate proffered in the appropriate manner and circumstances. Nor does it appear that the register of deeds has the duty, responsibility or authority to give legal advice to an individual wishing to file a death certificate pursuant to K.S.A. 58-501 or other authority. Decisions concerning how and what to file must be made by individuals seeking to affect title.

It is our opinion that K.S.A. 1990 Supp. 65-2422 and 65-2422d do not require or allow a register of deeds to close a death certificate filed with such a local officer for the purpose of affecting title to real property, unless the state has a contract with that office for the handling of such records. On the contrary, K.S.A. 58-501 contemplates notice to the public upon such filings. Notice is prevented if such records are closed. While a register of deeds may suggest alternatives, the register of deeds should not be placed in the position of providing legal advice to individuals seeking to protect their private property interests. Thus, pursuant to K.S.A. 45-215 et seq., it is our opinion that death certificates filed with the register of deeds, as proof of a death affecting title to real estate, are open records.

Although we recognize the validity of the concerns expressed by the state registrar with regard to policies for closing death certificates, it is our opinion that these policies and procedures are not mandated by laws concerning death certificates, real estate filings in the office of register of

deeds, and open records. Such policies may be implemented by the legislature.

Very truly yours,



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ATTORNEY GENERAL OF KANSAS



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