



STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

January 8, 1975

Opinion No. 75-7

Mr. Phillip M. Fromme
Coffey County Attorney
100 North 3rd
Burlington, Kansas 66839

RE: Mortgage registration fee; K.S.A. 1974
Supp. 79-3102 and K.S.A. 79-3105

Dear Mr. Fromme:

You have requested from this office an opinion relative to the application of K.S.A. 1974 Supp. 79-3102 and K.S.A. 79-3105 as they apply to the registration in a second county of a supplemental mortgage given for the purpose of providing additional security for the same indebtedness; the new security consisting of property located in the second county. You advise that on February 7, 1973, a mortgage for \$200,000 was filed of record with the Morris County Register of Deeds, and a registration fee was collected. A mortgage for \$1,000,000 which supplemented the first was subsequently filed in Morris County on February 11, 1974, and again the necessary registration fee was paid. Then on September 30, 1974, a second supplemental mortgage was filed. This mortgage added new security to the first supplemental mortgage, but did not entail an increase in the amount secured. However, the additional security added

Mr. Phillip M. Fromme
Page Two
January 8, 1975

incorporated certain oil and gas leases located in Coffey County. The parties to the mortgage now desire to file this second supplemental in Coffey County. The specific question thus presented is whether Coffey County may exact a fee for filing the second supplemental mortgage or share in the fee paid to Morris County for the original mortgage and the first supplemental.

K.S.A. 1974 Supp. 79-3102 provides in pertinent part:

"Before any mortgage of real property or renewal or extension of the same shall be received and filed for record there shall be paid to the register of deeds of the county in which such property or any part thereof is situated, a registration fee of twenty-five cents (.25) for each one hundred dollars (\$100) and major fraction thereof, of the principal debt or obligation which is secured by such mortgage, and upon which no prior registration fee has been paid: Provided, That no registration fee whatsoever be paid, collected or required for or on any mortgage or other instrument, . . . (2) given for the purpose of providing additional security for the same indebtedness, where the registration fee herein provided for has been paid on the original mortgage or instrument."

The statute's terms are clear and unambiguous. In the instant case the second supplemental mortgage only entails giving additional security for the same amount as secured under the first supplemental, and as such clearly does not require the payment of any additional fees, notwithstanding that property in another county may be involved.

Mr. Phillip M. Fromme
Page Three
January 8, 1975

The question thus becomes one of determining whether the provisions of K.S.A. 79-3105 permits Coffey County to share the fees exacted initially by Morris County. K.S.A. 79-3105 directs itself to the sharing of the registration tax between counties when a fee is to be paid for the registration of a mortgage securing property in two or more counties. The important distinction to be noted here is that the mortgage (second supplemental) now to be registered does not require a tax to be paid. We find no authority in the Act which authorizes or directs a county officer to go back and proportionately divide the fee exacted from a prior registration. Accordingly, it is the opinion of this office that the additional security pledged via the second supplemental mortgage insofar as it does not warrant a tax for registration does not therefore entitle Coffey County either to a fee or a proportionate share of that collected by Morris County for the original mortgage and the first supplemental.

Very truly yours,

VERN MILLER
Attorney General

VM:JPS:en

cc: Kenneth W. McClintock
Morris County Attorney
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Council Grove, Kansas 66846