



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

September 29, 1975

ATTORNEY GENERAL OPINION NO. 75- 382

Mr. John V. Black
Pratt County Attorney
306 South Oak Street
Pratt, Kansas 67124

Re: K.S.A. 1974 Supp. 79-3102

Synopsis: Once a mortgage registration fee is paid upon the recording of a mortgage indebtedness, such fee shall not again be collected, if same indebtedness is secured at a later date by a second mortgage which is verified by affidavit to contain the original indebtedness.

Dear County Attorney:

You present a situation concerning a mortgage for \$30,000.00 and the mortgage registration fee paid on October 22, 1968, with maturity date November 1, 1969. This mortgage was renewed annually until March 22, 1974 when a new mortgage was recorded for \$30,000 between the same parties and encumbering the same land, and on March 25, 1974 the old mortgage was released. This second mortgage matured April 1, 1975. Accompanying it was an affidavit that the mortgagee verifies that the second mortgage represents the total consideration in the first mortgage and asked exemption from the mortgage registration fee, which was granted. Your xerox copy of this second mortgage does not indicate it has been released, and upon calling long distance Mary Jones, Register of Deeds, we learned that it is still unreleased.

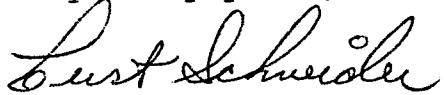
You also attach a xerox copy of a Mortgage and Security Agreement dated April 3, 1975 and acknowledged April 7, 1975. We have checked long distance again with Mary Jones and she acknowledges that this new instrument has an imposition of a lien on the same real estate for \$30,000.00 and the affidavit accompanying it refers to that sum as representing the total consideration in the second mortgage.

Your question is whether the exemption from the registration fee carries through to this third mortgage. Our answer is yes, in our opinion, if this last instrument still is securing the same indebtedness of \$30,000.00 upon the same property.

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It has long been the rule that the intent of the legislature was to impose the registration fee on the indebtedness and not the security. Union Pac. Rld. Co. v. Stratemeyer, 119 Kan. 8 (1925). The fee shall be collected only once on a single indebtedness. Fourth National Bank v. Hill, 181 Kan. 683, 698 (1957). The fee is a tax in lieu of all other ad valorem taxation. Meadowlark Hill, Inc. v. Kearns, 211 Kan. 35 (1973).

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/CJM/cgm