



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
*Attorney General*

December 4, 1975

ATTORNEY GENERAL OPINION NO. 75- 447

Mr. John E. Fierro  
County Attorney  
Ford County Courthouse  
Dodge City, Kansas 67801

RE: K.S.A. 79-3101 et seq.

**Synopsis:** A mortgage registration fee is a tax and no tax may be levied against a U.S. government agency. But where a second mortgage is undertaken to be recorded by the Farmers Home Administration, which includes by reference and recognizes the existence of an unrecorded first mortgage lien owned by non-exempt citizens, such portion of the second mortgage should not be recorded until the Register of Deeds is furnished sufficient information as to the exact amount of consideration secured by the first lien so as to be able to compute and assess against the mortgagees of the first lien the statutory mortgage registration fee.

Dear John:

We have your letter of November 28, 1975, attaching an Exhibit "A" which is a part of a second mortgage offered for filing with the Register of Deeds. It appears that the sellers made a contract whereby the buyers agreed to pay a sum certain in the purchase of a property, but the contract was never recorded. Now, the Farmers Home Administration wants to record a second mortgage against this same property, but in doing so sets up this sales contract and preserves it as a first lien.

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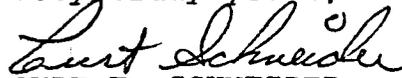
You ask whether the Register of Deeds should require that a registration fee be paid on the first lien. In our opinion this instrument does in fact incorporate by reference the prior existing contract lien, which is a mortgage as defined by K.S.A. 79-3101. It makes that first lien a matter of record, and protects the rights of both the buyers and sellers in that contract.

A mortgage registration fee is a tax which is normally paid by the mortgagee. Meadowlark Hill Inc. v. Kearns, 211 Kan. 35, 41, 505 P.2d 1127 (1973). Kansas shall never tax the property of the United States. Act for Admission of Kansas into the Union, Section Sixth.

But it is not suggested that a mortgage registration fee be assessed on the second mortgage of the Farmers Home Administration. It is our opinion that by Exhibit "A" an attempt is being made to record a first and prior lien, not belonging to an exempt entity, and upon which no registration fee has ever been paid. The first lien could not have been recorded without the parties paying the statutory registration fee. What cannot be done directly cannot be done indirectly. The Farm Home Administration cannot cast its cloak of exemption over non-exempt individuals.

We believe that the Register of Deeds should request evidence of the amount of consideration involved in the first lien contract and then assess the statutory registration fee required by K.S.A. 79-3101 et seq., or refuse to record "Exhibit 'A'".

Very truly yours,



CURT T. SCHNEIDER  
Attorney General

CTS/CJM/cgm