



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 10, 1976

ATTORNEY GENERAL OPINION NO. 76-280

Mr. Richard E. Samson
Stevens County Attorney
Stevens County Courthouse
Hugoton, Kansas 67951

Re: Taxation--Mortgage Registration Fees--Collection of
Delinquent Taxes

Synopsis: A mortgage, and the note it secures, is an intangible and should be taxed as such, except the mortgage registration law provides that after the payment of the mortgage registration fee, the mortgage and note shall not otherwise be taxable. The amount of fee is based on the amount of debt which the mortgage secures. Where an openend mortgage provides for a larger debt but upon recording the registration fee is paid improperly on a lesser current advance, the fee is not paid in full, and demand for the full fee should be made. If payment is refused, the intangible tax law should be enforced against the mortgage and note.

* * *

Dear Mr. Samson:

Enclosed is a copy of our opinion no. 76-191 which you requested.

You ask what needs to be done to correct the situation where a Register of Deeds has in the past recorded mortgages and charged a mortgage registration fee on the current obligation and not on the second, larger and specific sum of the debt contained in the agreement.

Mortgage registration fees are taxes, and the collection thereof is governed by regular tax statutes. Meadowlark Hill, Inc. v. Kearns, 211 Kan. 35, 44, 505 P.2d 1127, (1973). The County Board

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of Commissioners may correct errors and irregularities in the charge of mortgage registration fees until August 1 of the year following the year in which the improper fee was paid. K.S.A. 1975 Supp. 79-1701a.

A mortgage, and the note it secures, is an intangible, and should be taxed as such, except K.S.A. 1975 Supp. 79-3102 provides that, after the payment of the mortgage registration fee, the mortgage and note "shall not otherwise be taxable." If the mortgage registration fee is not paid in full, then the mortgage with note is liable for the Kansas intangible tax. K.S.A. 1975 Supp. 79-3118b provides the procedure for going back five years to collect delinquent intangible taxes.

It is our opinion that mortgagees, who have paid a fee on less than the full amount of the debt, the recorded lien of which serves as public notice and which the mortgage secures, should be notified of the deficiency due on the registration fee and given a reasonable time to pay it. If there is a failure or refusal to pay such fee in full, then the County should enforce K.S.A. 1975 Supp. 79-3118b.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:gw