



STATE OF KANSAS

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July 3, 1979

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ATTORNEY GENERAL OPINION NO. 79- 129

Mr. Dan Love
County Attorney
Ford County Courthouse
Dodge City, Kansas 67801

Re: Mortgage Registration--Mortgage Registration Fee--
Determination of Amount of Fee

Synopsis: The mortgage registration fee imposed pursuant to K.S.A. 79-3102, as amended by Section 1 of 1979 Senate Bill No. 123 (effective July 1, 1979), may be charged only on the principal debt or obligation secured by the mortgage. As defined in said bill, the "principal debt or obligation" does not include "any finance charge or interest," and deferred interest may no longer be considered as part of the principal debt or obligation for purposes of said fee.

* * *

Dear Mr. Love:

Your office requested our opinion as to the proper amount upon which the Ford County Register of Deeds should base the mortgage registration fee in regard to a particular mortgage tendered for filing. In said mortgage it is provided that the principal sum of the mortgage is \$28,250.00, but due to the possible deferral of interest, the principal amount of the mortgage may be increased to \$29,648.96. Thus, pursuant to the loan agreement which this mortgage secures, by the deferral of interest the actual principal amount of the debt will be increased, over the term of the loan, until such time as the principal debt or obligation equals the amount of \$29,648.96.

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Prior to July 1, 1979, K.S.A. 79-3102, which imposes the mortgage registration tax, in relevant part, provided:

"Before any mortgage of real property . . . shall be received and filed for record there shall be paid to the register of deeds . . . 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" (Emphasis added.)

The statute did not, however, contain a definition of the term "principal debt or obligation." As a result, much confusion and controversy existed as to what was meant thereby, and during the 1979 session of the Kansas Legislature, Senate Bill No. 123 was enacted in response to such confusion. That bill adds the following language to K.S.A. 79-3102:

"As used herein 'principal debt or obligation' shall not include any finance charge or interest. In any case where interest has been precomputed, the register of deeds may require the person filing the mortgage to state the amount of the debt or obligation owed before computation of interest." (Emphasis added.)

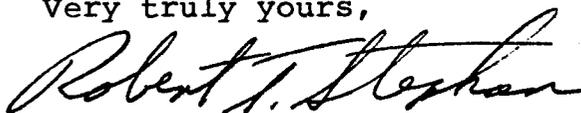
Thus, the legislature has now spoken and declared that the mortgage registration fee shall not be imposed upon that portion of the debt secured by the mortgage which is a finance charge or interest. Moreover, while prior to enactment of 1979 Senate Bill No. 123, a valid argument could have been made, in our judgment, that deferred interest, which becomes part of the principal debt, was to be included in determining the "principal debt or obligation," the legislature has now declared that such is not the case. The law now excludes "any . . . interest" from being considered as part of the principal debt or obligation.

Due to the enactment of 1979 Senate Bill No. 123, which became effective July 1 of this year, it is our opinion that the mortgage registration fee may not be required or collected on that portion of a debt, secured by a mortgage of real property,

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which is a finance charge or interest. In our judgment, it matters not whether the interest is "deferred," "accumulated" or otherwise. Thus, in regard to mortgages similar to the one submitted for our review, a register of deeds may require and collect the mortgage registration fee only on the principal debt or obligation of the mortgage, exclusive of deferred interest. Applying the foregoing to the specific mortgage submitted to us, the mortgage registration fee should be based on the amount of \$28,250.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm