



STATE OF KANSAS

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January 3, 1980

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ATTORNEY GENERAL OPINION NO. 80- 7

Mr. Arthur N. Turner
Ice, Turner & Ice
713 North Main Street, Box 224
Newton, Kansas 67114

Re: Taxation--Mortgage Registration Fee--Exemption
Therefrom

Synopsis: A mortgage of real property executed by a municipal
housing authority to a local bank is subject to
the mortgage registration fee.

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Dear Mr. Turner:

As attorney for the Halstead Housing Authority of Halstead,
Kansas, you request our opinion as to whether a real estate
mortgage, executed by the Authority to a local bank, is exempt
from the mortgage registration fee pursuant to K.S.A. 1979
Supp. 17-2351.

You explain that the Halstead Housing Authority was established
pursuant to the provisions of the Municipal Housing Law,
K.S.A. 17-2337 et seq., and that the City of Halstead conferred
upon the Authority the pertinent powers of the municipality,
in accordance with the provisions of said law. Recently,
the Authority acquired a site and awarded a contract for the con-
struction of a low-rent housing project. Permanent financing
for the project was negotiated and approved by the Farmers
Home Administration, necessitating the execution of a real

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estate note and mortgage by the Authority in favor of the F.H.A. You explain, however, that, under federal regulations, these funds will not be available until the project is completed and accepted, but local banks have agreed to furnish temporary construction funds through an additional real estate note and mortgage which will be paid and released upon receipt of the F.H.A. funds. It is in regard to this latter mortgage that you seek our opinion.

K.S.A. 1979 Supp. 17-2351 provides, in pertinent part, as follows:

"Bonds issued pursuant to this act are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes."

For purposes of the Municipal Housing Law, the term "bonds" is defined by K.S.A. 17-2339(1) to mean "any bonds, notes, interim certificates, debentures, or other obligations issued by . . . an authority pursuant to this act." Thus, to be exempt from taxation as provided in 17-2351, a mortgage on real property must be encompassed within the foregoing definition.

Clearly, a mortgage of real property is not a bond, note, interim certificate or debenture issued by the Authority. Moreover, in our judgment, a mortgage does not constitute an "obligation," as that term is employed in 17-2351. A mortgage is merely "a pledge or security of particular property for the payment of a debt." Black's Law Dictionary (4th ed. 1951), p. 1162. Thus, a mortgage is not, itself, an obligation; it is merely the security given to secure payment of an obligation. In this case, the note executed by the Authority to obtain the necessary temporary construction funds documents the obligation. The mortgage of the Authority's real property documents the security for such obligation. Therefore, we are constrained to conclude that a mortgage of real property is not such an instrument as is encompassed within the definition of the term "bonds" prescribed in K.S.A. 17-2339(1). Accordingly, it is our opinion that a mortgage of real property is not exempt, pursuant to K.S.A. 1979 Supp. 17-2351, from the mortgage registration tax imposed by K.S.A. 1979 Supp. 79-3102. However, the note

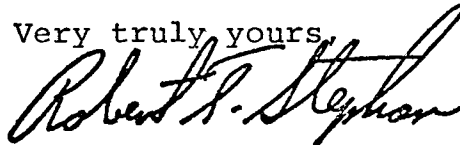
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secured by such mortgage is clearly exempt from taxation pursuant to the combined provisions of K.S.A. 17-2339(1) and K.S.A. 1979 Supp. 17-2351, as said note is an obligation of the Authority.

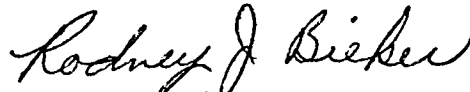
Moreover, while it is settled that the mortgage registration fee cannot be imposed upon a mortgage given to secure a loan made by an agency of the United States government [see, e.g., Home Owners' Loan Corp. v. Anderson, 145 Kan. 209 (1937)], such is not applicable to the mortgage involved herein as it was, or will be, executed to secure a loan made by a local bank.

Thus, in regard to the mortgage contemplated by the Halstead Housing Authority, it is our opinion that, upon tender of said mortgage for recordation with the register of deeds, the mortgage registration fee imposed pursuant to K.S.A. 1979 Supp. 79-3102 must be paid.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm