



STATE OF KANSAS

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March 27, 1980

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ATTORNEY GENERAL OPINION NO. 80-81

Mr. Jay W. Vander Velde
Lyon County Attorney
Lyon County Courthouse
Emporia, Kansas 66801

Re: Personal and Real Property--Conveyances of Land--
Recordation of Instruments Conveying or Affecting
Real Estate; Duties of Register of Deeds

Synopsis: There is no statutory authority which entitles
a "Funeral Director's Verification of Death"
form, which form is prescribed by subsection (b)
of K.S.A. 1979 Supp. 65-2412, to be recorded in
the office of the Register of Deeds. Cited herein:
K.S.A. 19-1204, 58-2213, 58-2216 and 58-2221 and
K.S.A. 1979 Supp. 65-2412.

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Dear Mr. Vander Velde:

You request our opinion as to whether there is any statutory
authority for a Register of Deeds to record the "Funeral
Director's Verification of Death" form prescribed by subsection
(b) of K.S.A. 1979 Supp. 65-2412. The aforesaid statute
provides that the death certificate filed with the state
registrar of vital statistics shall be the official death
record,

"except that a funeral director, licensed
pursuant to K.S.A. 1979 Supp. 65-1714
may verify as true and accurate information

pertaining to a death on a form provided by the state registrar, and any such form, verified within twenty-one (21) days of date of death, shall be prima facie evidence of the facts therein stated for purposes of establishing death."

K.S.A. 19-1204 provides, in part, that the register of deeds "shall . . . record . . . all deeds, mortgages, maps, instruments and writings authorized by law to be recorded in his office and left with him for that purpose." (Emphasis added.) As was stated in National Bank of Tulsa v. Warren, 177 Kan. 281, 285 (1955), K.S.A. 58-2221 prescribes those instruments which are "entitled to record." That statute provides, in part, as follows:

"Every instrument in writing that conveys real estate, any estate or interest created by an oil or gas lease, or whereby any real estate may be affected, proved, or acknowledged, and certified in the manner herein-before prescribed, may be recorded in the office of register of deeds of the county in which such real estate is situated: Provided, It shall be the duty of the register of deeds to file the same for record immediately" (Emphasis added.)

The certification requirement imposed by the foregoing statute may be satisfied by either a certificate of proof (K.S.A. 58-2216) or a certificate of acknowledgment (K.S.A. 58-2213) endorsed upon the instrument. Nordman v. Rau, 86 Kan. 19, 20 (1911).

The "Funeral Director's Verification of Death" form promulgated by the state registrar of vital statistics contains neither a certificate of proof nor a certificate of acknowledgment, and, for this reason alone, it must be concluded that a register of deeds is not required to record such a form under the above quoted statutory provisions. See Nordman v. Rau, *supra*; Horney v. Buffenburger, 169 Kan. 342, 347 (1950). Additionally, it is doubtful that such a form even qualifies as an "instrument whereby any real estate may be affected," since a death certificate is the official death record and must be completed in every instance. K.S.A. 1979 Supp. 65-2412(b) and (d). Further, a death certificate, unlike the verification of death form, is entitled to record even though it contains no certificate of acknowledgment. K.S.A. 58-501(c). For all the above stated reasons, it is our opinion that there is no statutory authority

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for a Register of Deeds to record the "Funeral Director's
Verification of Death" form prescribed by subsection (b) of
K.S.A. 1979 Supp. 65-2412.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Terrence R. Hearshman

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RTS:BJS:TRH:jm