



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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April 7, 1982

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ATTORNEY GENERAL

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ATTORNEY GENERAL OPINION NO. 82-83

Maybell Hanigan
Register of Deeds
Labette County Courthouse
Oswego, Kansas 67356

Re: Taxation--Mortgage Registration Fee--Instruments
Subject Thereto; Irrevocable Letter of Credit
Secured by Real Property

Synopsis: A mortgage of real property, given in consideration for the issuance of an irrevocable letter of credit, secures an obligation, the amount of which provides the basis for determining the mortgage registration fee due thereon, and said mortgage may not be received and filed for record in the office of the register of deeds, until such mortgage registration fee has been paid. Cited herein: K.S.A. 1981 Supp. 79-3102, K.S.A. 79-3107.

* * *

Dear Ms. Hanigan:

You seek an opinion whether you correctly required the payment of a mortgage registration fee in regard to a mortgage of real property tendered for filing in your office. You do not question that the instrument so tendered is a mortgage of real property. However, it is alleged that, since the mortgage was given merely as consideration for the issuance of an irrevocable letter of credit and no debt currently exists which the mortgage secures, no mortgage registration fee is due.

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In our judgment, an irrevocable letter of credit, for purposes of the Kansas mortgage registration fee statutes, is tantamount to an agreement by the issuer of the letter of credit to make future advances of moneys on behalf of the issuer's customer. Of course, a mortgage of real property is issued by the customer in favor of the issuer to secure reimbursement by the customer to the issuer of any moneys advanced by the issuer under the letter of credit.

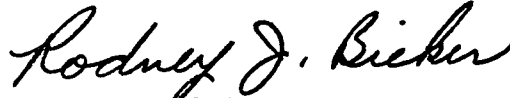
Under the provisions of K.S.A. 1981 Supp. 79-3102, the mortgage registration fee is to be based upon "the principal debt or obligation . . . secured" by the mortgage of real property. (Emphasis added.) The amount of the obligation secured by the mortgage tendered for filing in your office in this matter is stated clearly in that mortgage, and you have required payment of the mortgage registration fee based upon the total obligation so stated. We believe that, in doing so, you complied with the requirements of K.S.A. 1981 Supp. 79-3102 and 79-3107.

In summary, therefore, it is our opinion that a mortgage of real property, given in consideration for the issuance of an irrevocable letter of credit, secures an obligation, the amount of which provides the basis for determining the mortgage registration fee due thereon, and said mortgage may not be received and filed for record in the office of the register of deeds, until such mortgage registration fee has been paid.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm