



STATE OF KANSAS

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October 21, 1985

ATTORNEY GENERAL OPINION NO. 85- 144

John E. Lang
Pottawatomie County Counselor
Pottawatomie County Courthouse
Westmoreland, Kansas 66549

Re: Taxation--Mortgage Registration--Exemptions
Banks and Banking--Banking Code; Dissolution;
Insolvency--Powers of Federal Deposit Insurance
Corporation

Synopsis: When the federal deposit insurance corporation (F.D.I.C.) becomes receiver or liquidator of an insolvent bank as authorized by K.S.A. 9-1907, possession of and title to all of the assets, business, and property of any kind of the insolvent bank automatically vests in the F.D.I.C. pursuant to K.S.A. 9-1908. Insofar as the Kansas mortgage registration fee is a tax, a mortgage belonging to the F.D.I.C., (an instrumentality of the federal government) which is submitted to the register of deeds is exempt from the mortgage registration fee required by K.S.A. 79-3102, as amended by L. 1985, ch. 322, §1. Cited herein: K.S.A. 9-1907; 9-1908; and 79-3102, as amended by L. 1985, ch. 322, §1.

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Dear Mr. Lang:

As Pottawatomie County Counselor, you request our opinion regarding mortgage registration fee requirements. You inquire as to whether an instrument filed for recording by the Federal Deposit Insurance Corporation (F.D.I.C.) must be accompanied by a

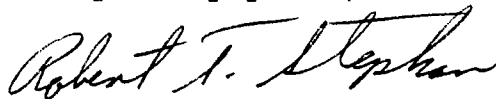
mortgage registration fee. You indicate that the instrument in question came into the hands of the F.D.I.C. when it became receiver for the insolvent First National Bank of Onaga, Kansas. You state also that a mortgage registration fee was paid on the original mortgage, but that the present instrument appears to secure a greater amount than that upon which initial the fee was paid.

As a general rule, if the initial amount of a debt or obligation secured by a mortgage of real property is increased, an additional mortgage registration fee is due. The amount due is the difference between the initial amount secured by the mortgage and the amount of debt subsequently secured. See Attorney General Opinion No. 82-91. Under the circumstances which you have presented, however, this general rule does not apply.

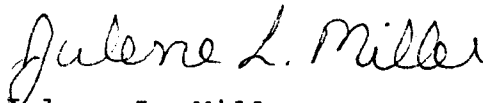
K.S.A. 9-1907 provides that the F.D.I.C. is authorized and empowered to act as receiver or liquidator of any insolvent bank if the bank has closed and its deposits insured by the F.D.I.C. Whenever the F.D.I.C. becomes receiver or liquidator, K.S.A. 9-1908 provides that "all assets, business, and property of every kind . . . of such bank . . . shall pass to and vest in such insurance corporation as receiver or liquidator without the execution of any instruments of assignment, endorsement, transfer, or conveyance." Thus, when the F.D.I.C. became receiver for the First National Bank of Onaga, the bank's mortgage became the property of the F.D.I.C.

The F.D.I.C. is an instrumentality of the United States government, created by 12 U.S.C. §1811 et seq. The Supreme Court of Kansas, in Home Owners' Loan Corp. v. Anderson Kan. 209, 211 (1937), held that such instrumentalities are not required to pay tax on mortgages offered for registration. The mortgage registration fee required by K.S.A. 79-3102, as amended by L. 1985, ch. 322, §1, is such a tax, and therefore the F.D.I.C. is exempt from payment of the fee. See Home Owners' Loan Corp. v. Anderson, supra.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Assistant Attorney General