



STATE OF KANSAS

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October 7, 1986

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ATTORNEY GENERAL OPINION NO. 86-141

Lynette Bennington
Register of Deeds
Stafford County
St. John, Kansas 67576

Re: Waters and Watercourses -- Appropriation of Water
for Beneficial Use -- Recordation of Certificate of
Appropriation

Personal and Real Property -- Conveyances of Land
-- Signature of Grantor; Acknowledgment

Synopsis: A photocopy of an original document conveying or affecting real property may be recorded with the register of deeds so long as the grantor actually signs the copy and the acknowledging officer actually signs the copy and imprints upon it his or her seal. The chief engineer of the division of water resources of the state board of agriculture is the grantor of water appropriation rights and may delegate such authority to his or her staff. In the situation presented for our opinion, the photocopy of the certificate of appropriation for beneficial use of water presented to the register of deeds for recordation is actually signed by the grantor. This document, however, may not be properly recorded until it bears the original signature and seal of the acknowledging officer. Cited herein: K.S.A. 1985 Supp. 53-102; 58-2209; 58-2211; K.S.A. 74-510a; 82a-701; K.S.A. 1985 Supp. 82a-714.

* * *

Dear Ms. Bennington:

As the register of deeds of Stafford County, you request our opinion concerning the recordation of certain documents. You ask whether a photocopy of a certificate of appropriation for beneficial use of water may be recorded by your office. The original document was apparently lost or destroyed. The photocopy bears a stamp which reads as follows:

" I hereby certify that this instrument is a true and correct copy of the original as purported:
Dated at Stafford, Kansas this 23 day
of May, 1986
/s/ Bruce W. Frisbie
Division of Water Resources
Kansas State Board of Agriculture"

On May 6, 1986, the document was signed by David L. Pope, chief engineer-director of the Division of Water Resources, Kansas State Board of Agriculture, and Denise J. Waters, notary public. We are informed that the paper you are asked to record carries the original signature of Bruce W. Frisbie but that the signatures of Pope and Waters are copies.

In order to obtain a vested right or appropriation right for the beneficial use of water, application must be made to the chief engineer of the division of water resources, state board of agriculture. Upon approval, the chief engineer must issue a certificate of appropriation in duplicate. K.S.A. 1985 Supp. 82a-714.

"The original of such certificate shall be sent to the applicant and shall be recorded with the register of deeds in the county or counties wherein the point of diversion is located, as are other instruments affecting real estate, and the duplicate shall be made a matter of record in the office of the chief engineer."
(Emphasis added.) K.S.A. 1985 Supp. 82a-714.

The question is whether the photocopy of the certificate as presented to you may be filed by your office. It has long been the opinion of this office that a photocopy of an original instrument can be recorded if the grantor actually signs the photocopy and the acknowledging officer actually signs the copy and imprints upon it his or her seal. Attorney General Opinions No. 79-223; 76-283. "In such case, the copy has in fact become an original." Id.

In the present situation, the division of water resources is the "grantor" as it issues the certificates of appropriation. Mr. Bruce W. Frisbie of the division of water resources has signed the photocopy in question, certifying that it is a true and correct copy of the original. You ask whether Mr. Frisbie is authorized by statute to sign the document.

A water right or appropriation right is a real property right "appurtenant to and severable from the land on or in connection with which the water is used and such water right passes as an appurtenance with a conveyance of the land by deed, lease, mortgage, will or other voluntary disposal, or by inheritance." K.S.A. 82a-701(g). K.S.A. 1985 Supp. 58-2209 provides as follows:

"All deeds or other conveyances of lands, or of any estate or interest therein, shall be subscribed by the party granting the same, or by the party's lawful agent or attorney, and may be acknowledged or proved and certified in the manner prescribed by the uniform law on notarial acts" (Emphasis added.)

The chief engineer of the division of water resources is authorized to issue certificates of appropriation. K.S.A. 1985 Supp. 82a-714. However, K.S.A. 74-510a also provides:

"The chief engineer of the division of water resources of the state board of agriculture is hereby authorized to delegate to members of his or her staff any duty or function prescribed for the chief engineer by law."

Therefore, David L. Pope, the chief engineer, may lawfully delegate the power to issue certificates of appropriation to any member of his staff. Accordingly, Mr. Frisbie, acting in his capacity as the agent of Mr. Pope, is authorized to sign the document in question as the grantor of the water right.

You also inquire whether Mr. Frisbie's statement that the photocopy was a true and correct copy of the original instrument was required to have been made under oath. As noted above, we reaffirm our previous opinions that a photocopy may be recorded if the grantor signs the photocopy and the acknowledging officer signs the photocopy and imprints upon it his or her seal. Attorney General Opinions No. 79-223; 76-283. Thus, there is no requirement that Frisbie's statement be made under oath. Kansas law does,

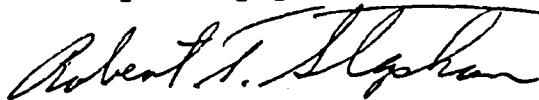
however, require a photocopy of a document to be acknowledged before it can be recorded.

An acknowledging officer is a "person authorized by the uniform law on notarial acts to perform notarial acts or, if acknowledged within this state, by a county clerk, register of deeds or mayor or clerk of an unincorporated city." K.S.A. 1985 Supp. 58-2211. The original certificate or a copy thereof was acknowledged by Denise J. Waters, who, as a notary public, is authorized to perform such acts. See K.S.A. 1985 Supp. 53-102 et seq. However, there has been no original acknowledgment on the photocopy presented for recordation. It is, therefore, our opinion that this photocopy of the certificate of appropriation cannot be recorded unless and until it is properly acknowledged.

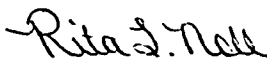
Lastly, you ask whether the statement accompanied by Mr. Frisbie's signature is sufficient to certify the document in question as a true and correct copy of the original. Kansas law requires only that the grantor sign all deeds or other conveyances of real property interests. K.S.A. 1985 Supp. 58-2209. The document presented for recordation bears Mr. Frisbie's original signature. We must conclude that the certificate signed by Mr. Frisbie as grantor more than complies with state law.

In summary, a photocopy of an original document conveying or affecting real property may be recorded with the register of deeds so long as the grantor actually signs the copy and the acknowledging officer actually signs the copy and imprints upon it his or her seal. The chief engineer of the division of water resources of the state board of agriculture is the grantor of water appropriation rights and may delegate such authority to his or her staff. In the situation presented for our opinion, the photocopy of the certificate of appropriation for beneficial use of water presented to the register of deeds for recordation is actually signed by the grantor. This document, however, may not be properly recorded until it bears the original signature and seal of the acknowledging officer.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General