



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 81

Rosalee Sprick
Register of Deeds
Rooks County Courthouse
Stockton, Kansas 67669

Re: Taxation--Mortgage Registration and Intangibles;
Mortgage Registration--Fee; Exemptions

Synopsis: Under a mortgage with a close-ended future advance clause, a lender may make future advances which would be secured by the original mortgage and pay no additional mortgage registration tax as long as 1) the aggregate amount of outstanding indebtedness does not at any time exceed the maximum amount stated as secured in the original mortgage and 2) mortgage registration tax has been paid on the maximum amount stated as secured in the original mortgage. Cited herein: K.S.A. 79-3102.

* * *

Dear Ms. Sprick:

You request our opinion regarding payment of mortgage registration tax on an amendment to a mortgage previously filed and upon which mortgage registration tax was paid.

The original mortgage secured principal indebtedness of \$4,500,000. It also secured future advances "to the extent only, however, that the aggregate amount of the original and future advances, unpaid and outstanding at any one time does not exceed the sum of [\$4,500,000]." Thus, the original mortgage contained a close-ended future advance clause and the

mortgage registration fee collected was based on \$4,500,000, the maximum amount of possible secured indebtedness at the time of the registration. See Halliburton Co. v. Board of Jackson County Comm'rs, 12 Kan.App.2d 704, 708-711 (1988).

The amendment now offered for recording is given for the purpose of adding an additional mortgagor. An affidavit was executed to this effect. The amendment states that there is \$4,000,000 in outstanding principal amount and "Mortgagee has agreed to make additional loans to Original Mortgagor and Additional Mortgagor in the maximum aggregate principal amount of \$500,000, to be secured by the Mortgage pursuant to the future advance clause. . . ."

K.S.A. 79-3102 provides in part:

"(a) Before any mortgage of real property, or renewal or extension of such a mortgage, is received and filed for record, there shall be paid to the register of deeds of the county in which such property or any part thereof is situated a registration fee of \$.26 for each \$100 and major fraction thereof of the principal debt or obligation which is secured by such mortgage, and upon which no prior registration fee has been paid.

. . . .

"(d) No registration fee whatsoever shall be paid, collected or required for or on:

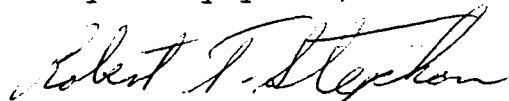
. . . .

"(3) any mortgage or other instrument upon that portion of the consideration stated in the mortgage tendered for filing which is verified by affidavit to be principal indebtedness covered or included in a previously recorded mortgage or other instrument with the same lender or their assigns upon which the registration fee herein provided for has been paid. . . ."

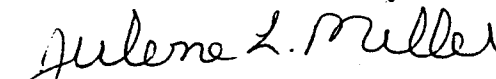
In Halliburton the court indicated that under a close-ended future advance clause a lender could make future advances which would be secured by the original mortgage and

pay no additional mortgage registration tax as long as the aggregate amount of outstanding indebtedness did not ever exceed the maximum amount stated as secured in the original mortgage and mortgage registration tax had already been paid on that maximum amount. It appears that this is what is being done with the mortgage and amendment in question. The amount stated in the amendment is principal indebtedness covered in a previously recorded mortgage with the same lender upon which the registration fee has been paid. The fact that an additional mortgagor has been added is of no consequence. See Attorney General Opinion No. 78-64. Therefore, it is our opinion that no mortgage registration tax should be paid or collected upon recording the amendment to mortgage in question.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm