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July 30, 2025

ATTORNEY GENERAL OPINION NO. 2025-16

Mr. James R. Campbell
Anderson County Counselor
511 Neosho St.
Burlington, KS 66839

Re: Notaries Public and Commissioners—Revised Uniform Law on
Notarial Acts—Authority to Perform Notarial Acts

Notaries Public and Commissioners—Revised Uniform Law on
Notarial Acts—Notarial Act in Another State

Notaries Public and Commissioners—Revised Uniform Law on
Notarial Acts—Acceptance of Tangible Copy of Electronic Record

Synopsis: K.S.A. 53-5a21 requires the notarial officer who executed the notarial certificate within an electronic record be the one who certifies the tangible copy of such record as accurate in order to satisfy any originality requirement by the register of deeds. K.S.A. 53-5a11 allows a notarial act performed in another state by someone authorized to perform notarial acts to have the same effect in Kansas as when a Kansas notarial officer performs a notarial act. When the original certification in the electronic record is performed by an out-of-state notarial officer, K.S.A. 53-5a11 and 5a21 together mean this notarial officer must be the one to certify the accuracy of the tangible copy to receive the benefit of K.S.A. 53-5a21. Cited herein: K.S.A. 53-5a04; K.S.A. 53-5a11; K.S.A. 53-5a21.

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Dear Mr. Campbell:

As the Anderson County Counselor, you ask what the requirements are for the filing of an electronic document with a register of deeds under K.S.A. 53-5a11 and K.S.A. 53-5a21. The crux of your question is whether a tangible copy of an electronic record signed and witnessed out of state may be accepted by the register of deeds as an original if the notarial officer who certifies the tangible copy is an accurate copy is not the notarial officer or officers who certified the electronic signatures of the document. Your question raises the issue of a document electronically signed by two out-of-state granters. None of the signatures, including the notaries, were original. A Kansas notarial officer, who did not witness the electronic signatures, certified the accuracy of the document to the register of deeds.

As explained below, we conclude that when someone files a tangible copy of a notarized electronic record with a register of deeds to satisfy any requirement that the record accepted be an original, the notarial officer who executed the notarial certificate in that electronic record must be the one to certify the tangible copy's accuracy.

Analysis of this issue requires statutory interpretation. Statutory interpretation begins with the statute's text, giving words their ordinary, everyday meanings.¹ Only when the language is ambiguous are canons of statutory construction, legislative history, or other background information employed to discern the statute's meaning.²

Notarial acts performed in another state are controlled by K.S.A. 53-5a11:

- (a) A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state if the act performed in that state is performed by:
 - (1) A notary public of that state;
 - (2) a judge, clerk or deputy clerk of a court of that state; or
 - (3) any other individual authorized by the laws of that state to perform the notarial act.
- (b) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.
- (c) The signature and title of a notarial officer described in subsection (a)(1) or (a)(2) conclusively establish the authority of the officer to perform the notarial act.

¹ *Midwest Crane & Rigging, LLC v. Kan. Corp. Comm.*, 306 Kan. 845, 850, 397 P.3d 1205 (2017).

² *Nauheim v. City of Topeka*, 309 Kan. 145, 149-50, 432 P.3d 647 (2019).

More simply, a notarial act performed in another state, by an individual authorized to do so in that state, is treated the same as if a Kansas notarial officer performed the act.³ When combined with K.S.A. 53-5a04(b), K.S.A. 53-5a11 authorizes a notarial officer in another state to certify the accuracy of a tangible copy of an electronic record.

K.S.A. 53-5a21(c) controls the specific question you ask here:

A register of deeds may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

While a notarial officer may certify a tangible copy of an electronic record as an accurate copy of that electronic record generally,⁴ only K.S.A. 53-5a21(c) speaks to the requirements for certifying that a tangible copy of an electronic record recorded by a register of deeds is an accurate copy of the original.

K.S.A. 53-5a21(c) states that a register of deeds may accept “a tangible copy of an electronic record containing a notarial certificate” as satisfying the requirements for the recording to be an original. The provision then goes on to condition this acceptance on “the notarial officer executing *the* notarial certificate” certifying that the tangible copy is an accurate copy of the electronic record.⁵ By the plain language of the statute, the “notarial certificate” referenced twice by K.S.A. 53-5a21(c) is the same notarial certificate. Thus, the notarial officer who executed the notarial certificate for the original electronic record must be the notarial officer to certify the tangible copy is accurate. A later, different notarial officer who did not execute the notarial certificate in the electronic original cannot certify the copy as accurate to satisfy any requirement that a record be original.

This is further reinforced by the use of the word “the” immediately prior to both “notarial officer” and “notarial certificate” in the latter part of the statute. Such specific, singular language indicates that the notarial officer who executed the certificate in the electronic record is the notarial officer required to certify that a tangible copy of that record is accurate in order for that tangible copy to be accepted by the register of deeds as satisfying any requirement that the record be original.

³ Although we do not reach an opinion here, for notarial acts performed in jurisdictions that are not other states, controlled by K.S.A. 53-5a12, 5a13, or 5a14, the analysis would likely be the same or similar.

⁴ K.S.A. 53-5a04(b).

⁵ K.S.A. 53-5a21(c).

This does not limit the ability of notarial officers to certify tangible copies of an electronic record. K.S.A. 53-5a04(b) allows a notarial officer to certify that a tangible copy of an electronic record is accurate. K.S.A. 53-5a21(c) only limits who may certify that a tangible copy of an electronic record filed with a register of deeds is an accurate copy of the original to satisfy an originality requirement. If there is no requirement that a tangible copy of an electronic record be original, then K.S.A. 53-5a21(c) would not apply. K.S.A. 53-5a21(c) only supplies an alternative method to satisfy a requirement that a record be an original for a register of deeds to record it.

In conclusion, K.S.A. 53-5a21(c) applies only under specific conditions. The document that a person seeks to submit to a register of deeds must be a tangible copy of an electronic record that contains a notarial certificate. To satisfy the originality requirement, that tangible copy must be certified as accurate by the notarial officer who executed the notarial certificate in the electronic record. When that first certificate was executed by a notarial officer in another state, he has the authority to certify the tangible copy as accurate under K.S.A. 53-5a11. Therefore, when an electronic record contains notarial certificates from out-of-state notarial officers, those notarial officers must be the ones who certify the tangible copy is accurate under K.S.A. 53-5a21(c).

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Ryan J. Ott

Ryan J. Ott
Assistant Solicitor General