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Memorandum regarding questions the registers of deeds were considering presenting for attorney general's opinion

1: What recording fees and registration taxes should be charged on an eighteen page, $75,000 mortgage for a single family residence used as a primary residence?

This question presents three subquestions. The answers to those questions are as follows:

- The amount of fees will change per year as recording fees increase and the registration tax decreases.

- The $125 cap applies only to the recording fees found in K.S.A. 2013 Supp. 28-115 and does not apply to the registration tax found in K.S.A. 79-3102.

- The fees in subsection (a), the tech fees in subsection (b) and the heritage trust fund fees found in subsection (i) of K.S.A. 2013 Supp. 28-115 are all subject to the $125 cap. In the case of a $75,000 mortgage for a single family residence used as a primary residence, the total fees imposed under K.S.A. 2013 Supp. 28-115 may not exceed $125.

A.-B. *The amount of fees will change per year as recording fees increase and the registration tax decreases. The $125 cap applies only to the recording fees found in K.S.A. 2013 Supp. 28-115 and do not apply to the registration tax found in K.S.A. 79-3102.*

As an initial note, the $125 cap applies only to the recording fees in K.S.A. 2013 Supp. 28-115 and not to the registration tax found in K.S.A. 79-3102. The legislature clearly demonstrated that its intent was that the $125 cap apply only to the recording fees and not the registration tax. This intent is found in HB 2643 § 14(j) which states "On and after January 1, 2015, the ***fee*** shall not exceed $125 ***for recording*** single family mortgages on principal residences ***imposed pursuant to this section*** . . ." (emphasis supplied). The use of the term "section" means that the cap only applies to fees provided for in that particular statute. Of note, because the cap applies to the

"section" and does not differentiate between any subsections, it applies to all subsections within the statute. Second, HB 2643 § 15 amends K.S.A. 79-3102 by amending the term "registration fee" to read "registration tax" in subsection (a). Although the legislature failed to amend the term "registration fee" in subsections (d) and (e) of Sec. 15, the amendment to "tax" clearly indicates the legislature did not contemplate the registration tax to fall under the purview of the recording fee cap.

Next, the total charges will change on an annual basis in accordance with the two statutes. The recording fees that are to be charged are found in Sec. 14 (a)(1-5), (b) and (i). The registration tax, which decreases annually before finally sun setting is found in Sec. 15(a)(1-6). The charges in the above example are broken down per year through 2019 in the attached presentation. In 2019, the first year a registration tax is no longer imposed, the total charges in the example will be the $125 recording fee cap.

C. *The fees in subsection (a), the tech fees in subsection (b) and the heritage trust fund fees found in subsection (i) of K.S.A. 2013 Supp. 28-115 are all subject to the $125 cap. In the case of a $75,000 mortgage for a single family residence used as a primary residence, the total fees imposed under K.S.A. 2013 Supp. 28-115 may not exceed $125.*

The $125 cap applies to all fees imposed by the statute. This includes the tech fee found in subsection (b) and the heritage trust fund fee found in subsection (i). Thus, the total fees assessed under K.S.A. 2013 Supp. 28-115 may never exceed $125 when a mortgage of $75,000 or less is recorded on a single family mortgage on a principal residence.

Subsection (j) provides "On and after January 1, 2015, the ***fee*** shall not exceed $125 ***for recording*** single family mortgages on principal residences ***imposed pursuant to this section*** where the principal debt or obligation secured by the mortgage is $75,000 or less" (emphasis supplied). When the legislature used the term "section" in this exception, it intended that all subsections within the statute are to be included within the cap. This is clear from use of the term "section." If only the fees in subsection (a) were to be subject to the cap, the legislature would have stated "subsection (a)" in the exclusion. "When construing statutes, we are required to give effect to the legislative intent if that intent can be ascertained. When a statute is plain and unambiguous, we must give effect to the legislature's intention as expressed, rather than determine what the law should or should not be. . . . A statute should not be read to add that which is not contained in the language of the statute or to read out what, as a matter of ordinary language, is included in the statute." *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 521, 154 P.3d 494, 504 (2007). Further, "[w]ords and phrases that have acquired a peculiar and appropriate meaning in law are to be construed accordingly." *Rose v. Via Christi Health Sys., Inc./St. Francis Campus*, 279 Kan. 523, 526-27, 113 P.3d 241, 244 (2005) (*citing Galindo v. City of Coffeyville*, 256 Kan. 455, 465, 885 P.2d 1246 (1994)).

"Section" is a term in common usage. It has acquired a peculiar and appropriate meaning in law and is to be construed accordingly. "Section" is the term used for individual statutes–and not

subparts of statute–since at least the Revised Statutes of 1923. It has never been understood to mean a particular subsection or part of a statute to the exclusion of the rest of the statute.

The Explanatory Preface to the Kansas Statutes Annotated states:

> The chapter-article-section numbering system, which was first used in Kansas in the Revised Statutes of 1923, is continued in this volume. For example, "K.S.A. 75-705" is section 7 of article 7 of chapter 75. If the sections in an article exceed 99, the section numbers are preceded by a comma. For example, section 135 of article 52 of chapter 75 would be designated "75-52,135." . . . A legislative history follows each statutory section and includes its effective date.

The term "section" also has been used to delineate individual statutes within enactments since at least the 1864 Session Laws. These session laws are no different. HB 2643 *section* 14 amends K.S.A. 2013 Supp. 28-115. The legislature used the term "section" in the house bill to describe the statute. It also used the term "section" in subsection (j) to describe the entire statute. Statutes are to be read to be internally consistent, moreover, a word is known by the company it keeps. "Section" when used to describe the statute in the house bill means exactly the same thing "section" means when found in subsection (j). The recording fee cap works to limit the entire fees imposed by the statute regardless of the subsection the individual fees are found in.

Further, it makes no difference that subsection (j) limits the "fee" while separate "fees" are imposed under subsection (a) (b) and (i). "Fee" is understood in this statute to mean "fees." The cap of $125 can never be reached for a single family mortgage on a primary residence unless a document with multiple pages is filed. Thus, there is a first page fee, and subsequent page fees. These separate statutory charges found in subsection (a) are stated to be "fees"in both subsections (b) and (I). ("In addition to the fees required to be charged and collected pursuant to subsection (a)"). Thus, within the statute, "fee" is understood to mean "fees." The cap in subsection (j) applies equally to the fees incurred under subsection (a), the fees under subsection (b), and the fees under subsection (i). K.S.A. 77-201 provides in pertinent part: "Words importing the singular number only may be extended to several persons or things, and words importing the plural number only may be applied to one person or thing." Fee, here, means all fees imposed under the statute.

Moreover, the fees under subsections (b) and (i) are fees for recording and are specifically included in the cap. Subsection (b) provides in pertinent part: "the register of deeds shall charge and collect an additional ***fee*** of $2 per page prior to January 1, 2015, and $3 per page on and after January 1, 2015, ***for recording***" (emphasis supplied). Thus, subsection (b) requires the register of deeds to charge and collect an additional "fee . . . for recording." Nowhere in the subsection is the fee labeled a technology fund fee or anything other than a fee for recording. Likewise, subsection (i) provides in pertinent part "the register of deeds shall charge and collect an additional ***fee*** of $1 per page ***for recording***" (emphasis supplied). Nowhere is the fee labeled a heritage trust fund fee. It is a "fee . . . for recording." Subsection (j) states "the ***fee*** shall not

exceed $125 ***for recording***" (emphasis supplied). Subsections (b) and (i) are clearly included within the section (j) limitation.

Finally, even if the term "section" were somehow ambiguous, here, it would be strictly construed in favor of the taxpayer. "When construing tax statutes, imposition provisions are considered penal in nature and must be construed strictly in favor of the taxpayer." *Saline Cnty. Bd. of Cnty. Comm'rs v. Jensen*, 32 Kan. App. 2d 730, 733, 88 P.3d 242, 245 (2004) (*citing In re Tax Appeal of Harbour Brothers Constr. Co.*, 256 Kan. 216, 223, 883 P.2d 1194 (1994)). The $125 cap cannot be construed to apply only to subsection (a). It applies to all fees imposed upon a single family mortgage on a principal residence within the statute.

2: Can the Register of Deeds require supporting documentation in order to establish the mortgage is subject to the $125 cap on recording fees?

Yes. The register must require supporting documentation whenever the person filing seeks shelter under the $125 exception to the statute. This would require documentation that 1) the mortgage was for $75,000 or less 2) the mortgage is a single family mortgage, and 3) the mortgage is for a principal residence. If any of these elements remain unproven after documentation, the register may either decline to register the mortgage, or assess full fees not subject to the $125 cap.

The recording statute imposes duties upon the register of deeds. When an officer of the state or county is expressly granted powers and duties, the officer has implied power to the extent necessary to fulfill her duties. Moreover, when a statute imposes mandatory duties upon an officer, the officer lacks the discretion to deviate from the statute. Because the statute imposes mandatory duties upon the registers of deeds, the registers lack the ability to deviate from the fee schedule in the statute unless the person filing can demonstrate she or he meets the exception within the statute.

There are three bases to establish that the registers can require supporting documentation:

The first is found in a case interpreting K.S.A. 79-3102, the mortgage registration tax statute, and whether a taxpayer fell within a subsection (d) exception. There, the court stated "Where language of a statute is relied upon as creating an exemption from taxation, it must be strictly construed [*sic*] and the party claiming the exemption must bring himself clearly within the exemption." *Meadowlark Hill, Inc. v. Kearns*, 211 Kan. 35, Syl. ¶ 2, 505 P.2d 1127, 1129 (1973). The $125 cap is an exemption from taxation because any recording fees in excess of $125 are no longer due when the provisions of subsection (j) are met. Thus, the party claiming the exemption must clearly bring himself within the exemption. The party can only do this by providing supporting documentation showing 1) the mortgage is a single family mortgage, 2) the

mortgage is for a principal residence, and 3) the principal debt or obligation is $75,000 or less.[1] Further, "there is no procedure for investigation by the register of deeds set forth in the statute, thus the burden for showing a qualification for exemption is upon the person claiming the exemption on the basis of the instruments tendered for recording." *Id.* at 41, 505 P.2d at 1133.

The second basis is the duties of the register of deeds found in HB 2643 § 14(a)(b) and (i). Under those subsections, the register of deeds shall charge and collect certain fees for recording. This duty applies until the fees are capped at $125 because the register of deeds is recording a single family mortgage on principal residences imposed where the principal debt or obligation secured by the mortgage is $75,000 or less. When the register of deeds is recording a mortgage for a single family mortgage on a principal residence for an amount greater than $75,000, the duty to collect the prescribed recording fees remains intact because there is no statutory cap. Thus, the register of deeds must take necessary measures to ensure she or he is fulfilling her statutory prescribed duty. In such case, there is an implied power to take reasonably necessary measures to fulfill one's duties. As the court stated in *Bd. of Comm'rs of Edwards Cnty. v. Simmons*, 159 Kan. 41, Syl. ¶ 3, 151 P.2d 960, 961 (1944), "Unless a legislative intent is indicated otherwise an express grant of powers to an officer or governmental board carries with it such implied powers as are necessary for the due and effective exercise of the powers expressly granted and the discharge of the duties imposed."

The third basis is a variation of the second. When the word "shall" is used in a statute, (such as HB 2643 § 14(a) which states "[t]he register of deeds of each county ***shall*** charge and collect the following fees") the use of "shall" is either mandatory or directory. When the use is mandatory, no deviation or discretion is permitted. When the use is directory, the person or entity has discretion in how to follow the direction. The difference is stated in *Hole-In-One, Inc. v. Kansas Indus. Land Corp.*, 22 Kan. App. 2d 197, 913 P.2d 1225, 1227-28 (1996):

> Whether a statute containing "shall" is mandatory or directory is a question of legislative intent. Although no single test is controlling, the determination whether a statute is directory or mandatory depends on whether the thing directed to be done is of the essence of the thing required, or is a mere matter of form. Accordingly, a statute is directory if it relates to some immaterial matter so that compliance is a matter of convenience rather than substance. If the directions of a statute are given merely with a view to the proper, orderly, and prompt conduct of business, the statute is generally regarded as directory, unless the directions are followed by words of absolute prohibition. *See In re Guardianship & Conservatorship of Heck*, 22 Kan.App.2d ——, Syl. ¶ 4, 913 P.2d 213 (1996). A statute may be regarded as directory

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[1]Although the section does not define "principal debt or obligation," Sec. 15(b) provides "[a]s used herein, "principal debt or obligation" shall not include any finance charges or interest. Because courts will interpret legislative acts *in pari materia*, the definition found in Sec. 15 should be the definition applied in Sec. 14.

> "where no substantial rights depend on it, no injury can result from ignoring it, and the purpose of the legislature can be accomplished in a manner other than that prescribed, with substantially the same results. On the other hand, a provision relating to the essence of the thing to be done, that is, to matters of substance, is mandatory...." *Wilcox v. Billings*, 200 Kan. 654, 657, 438 P.2d 108 (1968).
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> When a fair interpretation of a statute shows that the legislature intended compliance to be essential to the validity of the act, the statute must be regarded as mandatory. *Wilcox*, 200 Kan. at 657–58, 438 P.2d 108; *see In re Guardianship and Conservatorship of Fogle*, 17 Kan.App.2d 357, 360, 837 P.2d 842 (1992).
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> In addition, a statute may be viewed as directory when it is "(1) not accompanied by negative words indicating the specific acts can be done in no other manner; or (2) no consequences of noncompliance are included." *White v. VinZant*, 13 Kan. App.2d 467, 473–74, 773 P.2d 1169 (1989).

Id. In this circumstance, the use of "shall" in Section 14 of HB 2643 appears to be mandatory. First, compliance with the statute is a matter of substance rather than convenience. This is demonstrated by 1) the disbursal to the county general fund provided for in subsection (h); the disbursal to the register of deeds, county clerk, and county treasurer funds provided for in subsection (b); and the disbursal to the heritage trust fund found in subsection (i). It is further demonstrated by 2) the use of the language "fees required to be collected" in subsections (g) and (h); 3) specific amounts to be charged and collected for specific services; and 4) annual increases in the specific amounts to be charged that are clearly delineated.

Second, the directions are accompanied by absolute prohibitions. Again, the fees are "required to be collected." Further, the fees "shall be due and payable before the register of deeds shall be required to do work." Subsection (h). Finally, there is the prohibition found in subsection (j) where on or after January 1, 2015, the fee shall not exceed $125 for certain specified mortgages.

Third, using the test delineated by the *White* court cited in *Hole-in-One*, the statute is mandatory. First, the statute is accompanied by negative words indicating the specific acts can be done in no other manner. Second, consequences of noncompliance are included in the statute. Both are found in Subsection (g) which provides "All fees required to be collected pursuant to this section, except those charged for the filing of liens and releases of tax liens under the internal revenue laws of the United States, *shall be due and payable before* the register of deeds shall be required to do the work. *If the register of deeds fails to collect* any of the fees provided in this section, the amount of the fees at the end of each quarter *shall be deducted* from the register's salary" (emphasis supplied). Because the fees shall be collected before recording and failure to collect the fees leads to a corresponding deduction in the register of deed's salary, both parts of the test are met. Based upon these reasons, the collection of fees appears to be mandatory as used in this

statute.

Because the charge of and collection of fees is mandatory, the register of deeds must collect the fees unless the person seeking to record meets the $75,000 mortgage cap exception found in subsection (j). Further, because the register of deeds appears to have no discretion in charging and collecting the fees, it becomes incumbent upon the person who falls within the exception to demonstrate that she or he falls within the exception. The register of deeds would fail to fulfill his or her statutory duties if the register permitted the fees to be capped at $125 without an adequate showing that the $125 was appropriate. Because the fees "shall be due and payable before the register of deeds shall be required to do the work" (subsection g), the register must ascertain the correct fee so the correct fee may be paid before the register records a mortgage. When a person seeking shelter under the $125 cap fails to produce evidence that 1) the mortgage was for $75,000 or less; *or* 2) the mortgage is a single family mortgage; *or* 3) the mortgage is for a principal residence; the register either must charge the appropriate fees that are not subject to the cap, or refuse to record the mortgage until the person can provide appropriate documentation.

3: If the $125 cap to recording fees applies, how is the $125 apportioned among the various funds designated to receive recording fees?

This is not clear. There appear to be several contradictory ways to interpret this.

The first was stated by Robert Parnacott, Assistant County Counselor for Sedgwick County, in one of the email threads. His email states:

> When read in its entirety, HB 2643 - Section (h), where the treasurer is directed to deposit fees into the general fund, provides an exception for the fees set out in subsection (b) [this subsection addresses the row offices' tech funds]. Exceptions are generally understood to exclude only those matters mentioned. The courts also cannot read into a statute an exception or provision not included by the legislature.
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> Therefore, the legislative intent appears to be that when the recording fees are capped, the entire amounts due the row offices' tech funds are paid; and the remainder can then be paid to the general fund. Because the state heritage trust fund is not addressed in Section (h), the remaining fees could be prorated between the county general fund and the state heritage trust fund. Once the state heritage trust fund has received $30,000 in a fiscal year, no more proration is necessary for payments made to the state heritage trust fund.

Unfortunately, subsection (h) may not extend this far. It provides "Except as otherwise provided in subsection (b) all fees required to be collected pursuant to this section shall be paid by the register of deeds to the county treasurer and deposited into the general fund of the county." Under subsection (b), the register of deeds pays all fees collected to the county treasurer. The difference in fees that appears outlined in subsection (h) is only that the county treasurer deposits

fees collected and paid by the register directly into a tech fund under subsection (b) whereas the county treasurer deposits any other funds paid by the register first into the county general fund. The language of the statute does not appear to support any interpretation past this.

Thus, when the fees are capped at $125, it is unclear whether the register of deeds is collecting fees under subsection (a), subsection (b) or subsection (i). Subsection (h) does not clarify whether fees under certain subsection are being collected first or whether prorated amounts are being collected under each subsection. Using the example from question 1 for the 2018 year, $310.00 in recording fees would be capped at $125. In the example, total subsection (a) fees are $238.00 or 76.8% of total collected; subsection (b) fees are $54.00 or 17.4%; and subsection (i) fees are $18.00 or 5.8%. If the collected fees were prorated, the technology fund fees under subsection (b) would total $21.75 with $14.50 of that total going to the register of deeds technology fund, $3.625 to the county clerk technology fund, and $3.625 to the county treasurer technology fund.

Another distinct possibility is that the phrases "*in addition to* the fees required to be charged and collected pursuant to subsection (a)" (emphasis supplied) found in subsections (b) and (i) demonstrate how funds are to be allocated when the recording fees are capped at $125. It is not entirely clear what "in addition to" would mean in this case–whether all fees are added at the same time to become part of a sum that can only be split pro rata, or whether the fees collected in subsections (b) and (i) are to be considered subsequent to the fees collected in subsection (a). If the latter were the case, in the 2018 example cited above, subsection (a) fees of $238 would be due and collected first. Yet because the total amount of subsection (a) fees could not be collected, nothing would remain or be collected under subsections (b) or (i).

Kansas case law and dictionary definitions are of limited value when interpreting the phrase"in addition to" in such a context. Google defines in addition "as an extra person, thing, or circumstance." https://www.google.com/#q=definition+of+%22in+addition+to%22 Merriam-Webster defines it as "combined or associated with: besides." http://www.merriam-webster.com/dictionary/in%20addition%20to. The Oxford English Dictionary provides "as an extra or additional thing (to something else); furthermore, besides." http://www.oed.com/view/Entry/2186?rskey=rfdnAO&result=1#eid. "The phrase is defined in Webster's Third New International Dictionary 24 (3rd ed. 1966) as meaning 'over and above.'" *Gov't of Virgin Islands v. Douglas*, 812 F.2d 822, 833 (3d Cir. 1987). *See also In re Friedman*, 466 B.R. 471, 488 (B.A.P. 9th Cir. 2012) ("The ordinary meaning of 'in addition to' is 'a part added' or 'besides'. Merriam–Webster's Dictionary, http://merriam-webster.com; see also Oxford English Dictionary, http://oxford dictionaries.com ('the action or process of adding something to something else')"). The use of the words and phrases "furthermore", "extra", "part added", "besides", and "adding something to something else" suggest that the something else (here subsection (a)) is in existence before something may be added "in addition to" it. At least two courts have suggested that the phrase "in addition to" means chronological or subsequent in the proper context. *See Encyclopaedia Britannica, Inc. v. Guerrero*, 598 F. Supp. 2d 849, 854 (N.D. Ill. 2009); *Matter of Columbia Gas Sys., Inc.*, 164 B.R. 883, 892 (Bankr. D. Del. 1994) *aff'd sub*

nom. In re Columbia Gas Sys., Inc., 182 B.R. 397 (D. Del. 1995). Thus, under this interpretation, the fees in subsections (b) and (i) may be considered to be assessed only subsequent to the fees in subsection (a). In situations when the cap is imposed and the total amount of fees normally due under subsection (a) have not been assessed, then, because no fees were assessed under subsections (b) or (i), the county treasurer would remit nothing either to the technology funds or to the heritage trust fund.

On the other hand, in interpreting the phrase "in addition to" found in K.S.A. 65-34,113(a)[2] the court in *Radke Oil Co., Inc. v. Kansas Dep't of Health & Env't*, 23 Kan. App. 2d 774, 778-79, 936 P.2d 286, 289 (1997) rejected the appellant, who "point[ed] to the fact that other jurisdictions have held that the term 'in addition to' does not mean 'in lieu of.' Radke's argument is that the absence of 'in the alternative or 'in lieu of' language shows the legislature intended that a criminal conviction *serve as a prerequisite* to a civil penalty. Thus, under this argument, a conviction would have to come before or be subsequent to a civil penalty." The court stated that "'in addition to'" does not, by itself, create a condition precedent." *Id.* at 777-78. If this is the case in this statute, and "in addition to" did not create a condition precedent, it would appear that distribution of the fees found in the subsections would be prorated because the fees from the various subsections were "mix[ed] or combine[d] . . . with other ingredients." http://www.merriam-webster.com/dictionary/add

4: If a person overpays the recording fee due, is the Register of Deeds required to refund the overpayment, either automatically, or upon request of the person, regardless of the amount?

The fee must be charged and collected before the register of deeds shall be required to do the work. (Subsection (g)). Any payment that is not correct because it is either too much or too little should be rejected and the work should not be performed. In a situation when a person alleges he or she falls under the $125 cap provision of subsection (g), there are several alternatives. If the person provides the necessary documentation to support her claim, the register should accept payment for $125. If the person alleges she falls under the cap provision but fails to provide supporting documentation, the register appears to have two alternatives. The register can either reject payment and not perform the work until the person provides supporting documentation; or perform the work after receiving the full payment that would be due without the subsection (j) cap because the person failed to provide the necessary documentation showing she was eligible for the cap.

The register of deeds is not responsible for and does not appear to have the statutory authority to process refunds. If the filer were paying under protest and the recording fees under K.S.A. 28-

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[2] Which provides: "(a) Any person who violates any provisions of K.S.A. 65-34,109 or 65-34,110, and amendments thereto, shall incur, *in addition to* any other penalty provided by law, a civil penalty in an amount of up to $10,000 for every such violation, and in case of a continuing violation, every day such violation continues shall be deemed a separate violation."

115 were a tax, the filer would have to follow the statutory mechanism in K.S.A. 79-2005 and contact the county treasurer for a refund. As a practical matter, even if the recording fees are not a tax, because the statute provides that all recording fees collected shall be paid by the register to the county treasurer (see subsections (h) and (b)), the register of deeds only has the statutory authority to pay the county treasurer. Because the register of deeds has no authority to collect illegal fees, the register of deeds should presume that all fees charged and collected were charged and collected pursuant to his or her statutory authority. Any other presumption that the register of deeds charged and collected registration fees illegally would be a legal conclusion made by the register of deeds. Because the register of deeds 1) does not have the statutory authority to conclude she collected illegal fees, and 2) is required to pay all fees collected pursuant to the statute to the county treasurer; the county treasurer is the appropriate county officer to process any refunds.

5: Can the county adopt and charge fees (under its authority in K.S.A. 19-117) for services that are not specifically covered in K.S.A. 28-115? Specifically, can the register of deeds impose handling fees to cover rejection cost and postage and how should the register of deeds handle refunds?

Yes, within limits, but the register of deeds should not handle refunds. "[B]ecause of home rule, cities and counties may enact local laws: (1) on subjects that are not addressed by state law; (2) on subjects where a state law exists but where that law does not apply uniformly to all cities or counties; and (3) on subjects where there is a uniform state law but local action has not been pre-empted by that law and the city or county wants to enact additional or supplemental (i.e., nonconflicting) local laws." Michael R. Heim, *Home Rule Power for Cities and Counties in Kansas*, 66 J.K.B.A. 26, 28 (1997). A county has a power to tax under K.S.A. 19-117 provided the action is not one limited or prohibited under K.S.A. 19-101a(a) and the local legislation proposed is not contrary to any act of the legislature. K.S.A. 19-101a(b).

K.S.A. 28-115 is not one of the areas limited or prohibited under K.S.A. 19-101a. Moreover, additional charges, as long as those charges do not increase the recording fees, are supplemental to the legislation and are not preempted. "[L]ocal action is only prohibited if there is a clear statement of legislature intent to pre-empt local initiative or there is an actual conflict between the state law and the local law." *Heim*, *supra* at 36. Thus, if there is not a clear statement that local legislation is not pre-empted, local legislation is not pre-empted. "We have consistently rejected the doctrine of implied preemption, reasoning that legislative intent to reserve exclusive jurisdiction must be clear." *Water Dist. No. 1 of Johnson Cnty. v. City Council of City of Kansas City*, 255 Kan. 183, 193-94, 871 P.2d 1256, 1264 (1994) (*citing City of Junction City v. Griffin*, 227 Kan. 332, 336, 607 P.2d 459 (1980)).

Thus "the board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate." K.S.A. 19-101a. Fees such as those contemplated for handling charges of rejected documents, and postage costs can be charged provided the board of county commissioners has enacted a resolution pursuant to K.S.A.

19-117. When charging a fee, that fee should reasonable and reasonably be related to the costs the register of deeds incurs. *See City of Beloit v. Lamborn*, 182 Kan. 288, 294-95, 321 P.2d 177, 182 (1958); *Matheny v. City of Hutchinson*, 154 Kan. 682, 121 P.2d 227, 232 (1942). The register of deeds should not handle refunds, however, because under the statute, the register of deeds is required to pay all fees collected to the county treasurer.

6: What are permitted expenditures from the Clerk and Treasurer technology funds?

The county clerk technology fund HB 2643 Sec. 16 and county treasurer technology fund HB 2643 Sec. 17 are substantially identical to the register of deeds technology fund, K.S.A. 2013 Supp. 28-115a. The main difference between each statute is which government office the county treasurer maintains the technology fund for. The only other difference in language is found in subsection (d) of each section. K.S.A. 28-115a states that "[a]ny action taken by the register of deeds under this subsection shall be in accordance with K.S.A. 19-1202, and amendments thereto." K.S.A. 19-1202 requires the register of deeds to submit budgets to the county commissioners. The clerk and treasurer technology funds statutes simply change this section to the section number appropriate for their budget duties. The statutes are otherwise identical. As such, any guidance that has been provided regarding appropriate expenditures for the register of deeds technology funds is also appropriate guidance for the clerk and treasurer technology funds.

Attorney General Opinion No. 2010-14 addressed what expenditures were appropriate under the register of deeds technology fund statute. It provided:

> The purpose of the technology fund is to provide a source of funding enabling counties to acquire computer equipment, associated software, and support to maintain records in an electronic format. Salaries may be an appropriate expenditure provided the activities performed by staff are related to the storing, recording, archiving, retrieving, maintaining and handling of data recorded or stored in the office of the register of deeds.

Thus, under the AG Opinion, in addition to the use of funds provided for in the statutes, salaries may be paid if there is a reasonable nexus between the salaries and the expenditures permitted in the statutes.