



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

July 15, 1975

ATTORNEY GENERAL OPINION NO. 75- 291

Mr. Richard H. Rumsey
Rumsey, Cox & Richey
1041 North Waco
Wichita, Kansas 67203

Re: Cities--Street and Alleys--Vacation

Synopsis: Cities of the third class may vacate streets, avenues, alleys and lanes by ordinance under K.S.A. 15-427, which authority is not impaired by the authority of the board of county commissioners to vacate property upon petition by the city governing body under K.S.A. 1974 Supp. 12-504.

* * *

Dear Mr. Rumsey:

As counsel for the City of Cheney, a city of the third class, you inquire whether the city may vacate streets and alleys and the like by ordinance without a hearing before the board of county commissioners held pursuant to K.S.A. 12-504 *et seq.*

K.S.A. 15-427 provides in pertinent part thus:

"The council shall have power to open, widen, extend or otherwise improve any street, avenue, alley, or lane; to create, open and improve any new street, avenue, alley, or lane; and also to annul, vacate or discontinue the same, whenever deemed necessary or expedient

Immediately after an ordinance opening, widening, extending, or vacating any street, avenue, alley or lane shall become effective,

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the clerk of the city shall file a copy thereof . . . in the office of the county clerk and in the office of the register of deeds"

This section was first enacted as ch. 60, § 55, L. 1871. The antecedent of K.S.A. 1974 Supp. 12-504 was originally enacted in 1877. Ch. 190, § 1, L. 1877, commenced thus:

"Whenever the owner or owners of any unimproved town site within the limits of this state shall desire to have the streets, alleys and other public reservations of such town site vacated, such owner or owners shall give notice by publication . . . that at the next regular session thereafter of the board of county commissioners of the county in which such town site is located, a petition will be presented to said commissioners praying that such streets, alleys, or other public reservations, describing them, shall be vacated."

That act authorized the board of county commissioners to enter an order vacating such property.

These two acts were construed in *City of Eudora v. Hartig*, 68 Kan. 742, 75 Pac. 1113 (1904). Speaking of the 1871 and 1877 acts, the court stated thus:

"Neither the act of 1871, which conferred upon cities of the third class power to vacate streets and alleys, the act of 1877, which conferred such power upon the commissioners, or the act of 1897, which conferred the same power upon the district court, is exclusive. Since all of these acts stand, it must follow that each tribunal named may exercise such power when called upon. The legislature may confer such power upon as many

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different tribunals as it may deem expedient, and any of such tribunals may exercise such jurisdiction." 68 Kan. at 746.

The power of the city governing body to vacate sites, additions, streets and alleys and the like by ordinance under K.S.A. 15-427 separately and independently from the power of the board of county commissioners to do so is drawn in question by a 1967 amendment to K.S.A. 12-504, which now provides that not only the "owner or owners" of

"any townsite or part of a townsite, or of any addition or part of an addition to any city, . . . or . . . of lands adjoining on both sides of any street, alley or public reservation such as, but not limited to public easements, dedicated building setback lines, access control, or a part thereof"

but also the governing body of the city in which any of the foregoing are located, which desires to vacate any of the foregoing shall apply to the board of county commissioners.

K.S.A. 15-426 confers authority on the city governing body to vacate by ordinance streets, avenues, alleys and lanes. K.S.A. 1974 Supp. 12-504 deals with the vacation of townsites and additions and parts thereof, lands adjoining streets, alleys and other public reservations, farming lands and unplatted tracts. There is no necessary conflict between the two statutes, although the authority of the board of county commissioners to vacate the property within the city under K.S.A. 1974 Supp. 12-504 may also duplicate the authority of the city to vacate streets, alleys and the like in particular instances.

In *City of Eudora v. Hartig, supra*, the court found the authority of the city to vacate streets and alleys was unimpaired by later legislative grants of similar authority to boards of county commissioners and to district courts. Similarly, here, there is nothing in the 1967 amendment to K.S.A. 12-504 to suggest that the existing authority of the city governing body to vacate streets, alleys and the like by ordinance is limited in any way by the grant of perhaps

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overlapping but substantially broader authority to the board of county commissioners to vacate property also, upon petition by the city governing body.

Accordingly, it is our opinion that the city governing body remains empowered to vacate streets, alleys, avenues and lanes by ordinance under K.S.A. 15-427 without filing a petition with and the conduct of a hearing before the board of county commissioners, and that such vacation by the city will pass good title to the vacated property to the adjoining landowners as prescribed by K.S.A. 15-427.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj