



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

August 25, 1975

ATTORNEY GENERAL OPINION NO. 75- 340

Mr. James I. Immel
Allen County Attorney
Allen County Courthouse
Iola, Kansas 66749

Re: Cities--Streets and Alleys--Acquisition

Synopsis: A city may acquire real property for street and alley purposes by prescription.

* * *

Dear Mr. Immel:

You request my opinion whether a municipality or other political subdivision may obtain an easement by adverse possession. The specific question arises, you indicate, in the City of Iola, which for at least 26 years has used and maintained certain property as an alley, although it has not been expressly dedicated to the public. During this period, the alley has been used as such by the public and by city garbage, maintenance and utility trucks. A recent purchaser of certain adjacent property has discovered from examination of the plat, however, that the alley has not been dedicated as such, and has given notice to the city and to neighbors to discontinue using it for that purpose, and has begun obstructing passage in various ways.

In *Miller-Carey Drilling Co. v. Shaffer*, 144 Kan. 508, 61 P.2d 1320 (1936), the court stated thus:

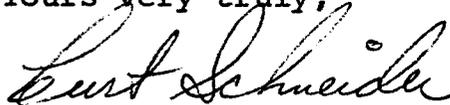
"In this state a city may acquire title to real property for street purposes in any of four ways: (1) When the owner of the property makes and files a plat thereof . . . showing streets thereon; (2) it may open streets, using the power of eminent domain; (3) it may purchase

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the property needed for street purposes under the authority granted . . . authorizing cities to purchase property needed for their use; or (4) *it may acquire a street by prescription.*" [Emphasis supplied.]

Based upon the underscored, it is my opinion that the city may acquire an easement by prescription to the alley in question.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj