



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 24, 1976

ATTORNEY GENERAL OPINION NO. 76- 189

Mr. R. A. Munroe
Attorney at Law
112 East Fifth Avenue
Augusta, Kansas 67010

Re: Cities--Real Property--Disposal

Synopsis: The city may convey unimproved real property to which it holds fee simple title in the exercise of its corporate powers under K.S.A. 12-101.

* * *

Dear Mr. Munroe:

You inquire concerning the disposition of a certain tract of land within the corporate limits of the City of Andover. You advise that many years ago, a subdivision in the county was platted, and a certain portion of it, situated in the internal area of the subdivision, was dedicated to the public use, by somewhat indefinite and ambiguous language. The property in question was thereafter annexed to the city. As a result of a declaratory judgment or quiet title action, the court held, by order of April 8, 1975, that the city held fee simple title to the property in question.

The city now desires to sell the land by offering it to either the public at large or to adjoining landowners. The question presented is the authority governing the disposition. As you point out, there are a number of statutes concerning the disposition of property of cities of the third class. However, they deal with specific types of property, such as city hall or other city building, or property acquired for street purposes. You point to K.S.A. 12-1739, however, as of possible application in this instance. It provides in pertinent part thus:

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"Any city owning any public building and site is, except as otherwise specifically provided by law, hereby authorized to sell *such building or building and site* upon such terms and in such manner as the governing body may deem to be in the best interest of the city." [Emphasis supplied.]

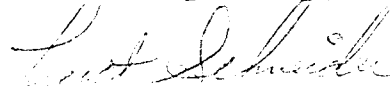
The term "site" in this provision is used conjunctively with the term "building," and refers, in my judgment, to municipal property which is used and occupied by a public building. The entire act in which this section appears, K.S.A. 12-1736 *et seq.*, was enacted in 1959, prior to the adoption of the home rule amendment to the Kansas Constitution. The act deals entirely with the acquisition and construction of public buildings and sites therefor. In my judgment, the act is not a general provision regarding the disposition of all municipal real property generally, such as, *e.g.*, park or recreational property which was not acquired for and is not used for or occupied by any municipal buildings.

I concur fully with your judgment that the city has inherent power to dispose of the property, K.S.A. 12-101, in describing the corporate powers of all Kansas cities, authorizes cities to

"Sell and convey any real or personal estate owned by the city, and make such order respecting the same as may be deemed conducive to the interests of the city, and to provide for the improvement, regulation and government of the same."

Accordingly, it is my opinion that the city may proceed to dispose of this property in such fashion as it deems in the best interests of the city. If there remain further questions, however, please feel free to contact me.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj