

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 16, 1976

ATTORNEY GENERAL OPINION NO. 76- 222

Mr. Joel R. Kriss
Thomas County Attorney
Post Office Drawer F
Colby, Kansas 67701

Re: Counties--Roads and Highways--Improvements

Synopsis: When a plat of land is filed located outside the limits of an incorporated city, and the streets and alleys thereof are used by the public for a number of years thereafter, the plat is sufficient to permit the owners of property therein to petition for improvements under K.S.A. 68-728, and authority for maintenance of the streets after such improvements are completed vests in the township.

* * *

Dear Mr. Kriss:

You advise that two areas adjacent to but outside the corporate limits of the City of Colby have been platted into lots or tracts, one commonly known as the Murray Subdivision and the other as the Ferguson Subdivision. These plats were filed of record with the Thomas County Register of Deeds in 1955 and 1959, respectively. The plats were signed by the owners of the property and the engineers who conducted the surveys, but were never notarized. No evidence suggests that these plats were approved or accepted by the county attorney or the board of county commissioners.

The question arises as to the legality of these plats. K.S.A. 12-401 provides in pertinent part thus:

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"Before any proprietor or proprietors of any proposed city of the second or third class or of any town, or of any proposed addition to any such city or town shall record the plat of such proposed city, town or addition, he or she shall furnish to the county attorney of the county in which such proposed city or town is located, or the city attorney and governing body in case of a proposed addition, an abstract of title and the plat to the land which is to be incorporated into such city, town or addition. Such county attorney, in case of any proposed city or town, or such city attorney and governing body in case of a proposed addition, after examination duly made, shall approve or disapprove said plat. Such city attorney, and governing body in case of any proposed addition to any town or city may require the streets and alleys, therein shown, to be as wide as, and to be conterminous [*sic*] with, the streets and alleys, of that part of the city or town to which it adjoins."

K.S.A. 12-403 states in pertinent part thus:

"That said register of deeds is hereby prohibited from filing and recording such map or plat unless the same shall have attached thereto a certificate in due form showing the approval of said map or plat by the county attorney in case of a town or city or by the governing body in case of a proposed addition to any city of the second or third class or any town."

The question is presented whether the plat was lawfully filed when no approval was given as required by K.S.A. 12-401. This statute was first enacted in 1868, and has been amended but twice, both more than half a century ago. On its face, it applies to plats proposed to be filed by the proprietor of a proposed city of the second or third class, and to plats of any proposed addition to any such city or town.

It is probably reasonable to assume that when the plats in question here were filed in 1955 and 1959, the owners of the land thus platted were not proprietors of a proposed city of the second or third class. It is rather more likely that the platted land was proposed to constitute additions to the existing City of Colby. In that instance,

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approval by the city governing body would be required before the plats were filed.

It is not clear what purpose approval by the city governing body was designed to serve. K.S.A. 12-401 states in pertinent part, to reiterate, as follows:

"Such county attorney, in case of any proposed city or town, or such city attorney and governing body in case of a proposed addition, after examination duly made, shall approve or disapprove said plat. Such city attorney, and governing body in case of any proposed addition to any town or city may require the streets and alleys, therein shown, to be as wide as, and to be conterminous [*sic*] with, the streets and alleys, of that part of the city or town to which it adjoins."

In some jurisdictions, acceptance of a proposed dedication of streets and alleys and other property is required to perfect and vest title in the public. In *Gadarl v. City of Humboldt*, 87 Kan. 41 (1912), involving a plat of land already taken into the city at the time of platting, the court held no act of acceptance was necessary to perfect a dedication of streets and alleys and to vest title thereto in the county. Thus, approval by the city governing body does not appear to constitute an acceptance, but is rather a device to enable it to assure that the street and alley widths, street configuration, and other features of the proposed dedicated property conform to the city which the platted property adjoins. If, however, approval is not given prior to filing of the plat, the city is not affected by its filing, for it may choose not to annex the platted land thereafter, thus assuming no responsibility for the care and maintenance of any streets, alleys and other public ways in the dedicated property.

Approval by the county attorney is required only in the instance of a proposed new city of the second or third class. Once again, it is not clear what purpose review by that officer is designed to serve, unless it is designed to assure the formal legal sufficiency of the plat.

Whatever the uncertain purposes of the approval requirement, the question remains what legal effect should be given a plat which is filed without the required approval, in view of the express direction of K.S.A. 12-403 that no plat shall be filed without such approval. It may be argued that the plats should be given no legal significance

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whatever. For example, it may be suggested that without the approval, the plat is ineffective to dedicate the streets and other public ways to the public, and to vest title thereto in the county. However, if the streets and alleys have been used as public ways for a quarter of century since the filing of the plats, it is likely that a court may find prescriptive rights to have accrued in favor of the public so as to prevent an owner of a tract of land in the platted area to claim title to a portion of any street or alley therein adjacent to his property. It is my view that despite the lack of approval by the city governing body, assuming the plats were filed as proposed additions to the city, or the lack of approval by the county attorney if filed for another purpose, that title to the streets and alleys has vested in the county, by virtue of, first, the filing of the plats, and, second, continued use of the streets and public ways since that time by the public.

Certainly, I see no reason why any remaining question as to the validity of the plats may not be resolved by the adoption of an appropriate resolution approving the plats.

The question remains whether the plats are legal plats for the purpose of K.S.A. 68-728, which provides that whenever any land shall be platted and laid off into blocks and lots in any county and outside the limits of any incorporated city, the board of county commissioners shall have the power to provide for the improvement of any public road, street or avenue whenever a sufficient petition is filed for that purpose. Once again, in my judgment, the filing of the plat and the continued use of the roads and streets therein for the period of time since 1955 and 1959 are sufficient to vest the title to the streets and roads in the county, and to entitle the owners of the property in question to petition the county under this provision for improvement of the streets pursuant to this act. It should be pointed out that any lingering doubt as to the validity of the plats for the purpose of K.S.A. 68-728 may be resolved by the adoption of a resolution pursuant to K.S.A. 19-191a(b) by the board of county commissioners authorizing it to exercise the powers and authority of that act respecting any platted land, whether filed with or without the approval of any officer or body required by K.S.A. 12-401.

Lastly, you inquire whether the provisions of K.S.A. 68-711 apply to road improvements made under K.S.A. 68-728 and, if not, who has the responsibility for maintenance of the roads after improvements are made under K.S.A. 68-728. The last paragraph of that section states in pertinent part thus:

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"Whenever any street, road or avenue is improved by the doing of any of the things provided for by this act, then thereafter the township within which such improvements are done or built may maintain such improvements within such township"

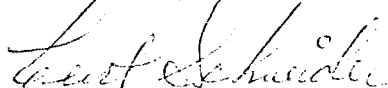
K.S.A. 68-711 states thus:

"All roads improved under the provisions of this act shall thereafter be maintained and kept in repair by the county in which said improved roads are located, in the same manner and method as required for federal aid roads as indicated in section 3 of chapter 264 of the Session Laws of 1917."

Inasmuch as the improvements made pursuant to K.S.A. 68-728 would not be done pursuant to the act referred to in K.S.A. 68-711, the responsibility for maintenance imposed thereunder would not fall upon the county. After the improvement is completed, authority for its maintenance vests in the township pursuant to the quoted provision of K.S.A. 68-728.

If further questions remain, please do not hesitate to call upon us.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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