



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 11, 1976

ATTORNEY GENERAL OPINION NO. 76-249

Mr. Shelley Graybill
Elkhart City Attorney
Elkhart, Kansas 67950

RE: Cities - Additions - Abstract of Title

SYNOPSIS: Under K.S.A. 12-401, the proprietor of a proposed addition to a city of the second class is required to furnish an abstract of title of a proposed addition to the city governing body and the city attorney. After examination thereof, the plat is required to be filed to perfect the dedication. There is no statutory requirement that the abstract of title be retained by the city, and accordingly, no statutory objection to its return to the proprietor of the proposed plat.

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Dear Mr. Graybill:

K.S.A. 12-401 requires that before the proprietor of any proposed addition to a city of the second class shall record the plat of the proposed addition,

"he or she shall furnish to the . . . city attorney and governing body . . . an abstract of title and the plat to the land which is to be incorporated into such . . . addition [S]uch city attorney and governing body . . . after examination duly made, shall approve or disapprove said plat."

The plat must be acknowledged, and to be effective must, upon approval, be filed and recorded in the office of the register of deeds and a copy thereof filed with the county clerk. Under K.S.A. 12-406, the acknowledgment, certification of approval, filing and recordation is sufficient to vest the fee of the parcels of land intended for public use in the county. In short,

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aside from the reference to an abstract of title in K.S.A. 12-401, there is no further mention in the entire article to the abstract.

The question is posed whether K.S.A. 12-401 requires the

"proprietors of proposed additions to a city of the second class to furnish an abstract of title of the land to be incorporated in such addition to the city attorney and governing body for the permanent possession of the city or merely for examination and return."

It is suggested, on the one hand, that delivery to the city governing body for its permanent possession is implicit in the section, the governing body not being professionally trained to make a legal examination of the abstract. Delivery to the city attorney is for the purpose of examination, and delivery to the governing body for its permanent custody and possession, it is suggested. On the other hand, it may be argued that the statute is silent on the matter, and that unless it is specifically provided otherwise, the proprietor of the proposed addition is entitled to its return.

K.S.A. 12-401 and succeeding sections require only that the plat be filed. The plat itself is the operative legal document, and the abstract of title plays no official role in the statutory platting procedure after it has been furnished to the city attorney and city governing body, in the instance of an addition to the city. The areas to be dedicated to public use are designated in the plat, and its filing constitutes the dedication of those areas. While there is the requirement that the abstract be furnished to the city attorney and governing body, I find no statutory requirement that the abstract be retained by the city, and accordingly, no statutory objection to its return to the party filing the plat after the examination is completed.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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