



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

October 4, 1976

ATTORNEY GENERAL OPINION NO. 76-306

Mr. Donald S. Simons
Chief Attorney
Kansas Department of Transportation
State Office Building
Topeka, Kansas 66612

Re: Highways--Real Estate--Transfer Of

Synopsis: K.S.A. 1975 Supp. 68-413(d) (1) authorizes the Secretary of Transportation to exchange real estate held in fee simple absolute for highway purposes, in consideration of the conveyance of other real estate in fee simple absolute to be likewise used for highway purposes.

* * *

Dear Mr. Simons:

You advise that the Secretary of Transportation is considering the exchange of a portion of land of an existing shop site, for other land to be used for the same purpose. The existing site is held in fee simple absolute, and like title would be acquired to the land to be received in exchange for it.

K.S.A. 1975 Supp. 68-413(d) (1) states in pertinent part thus:

"(1) Subject to the provisions of paragraph (2) of this subsection (d) *the secretary of transportation may dispose of any real estate or any right, title or degree or variety of interest therein which has theretofore been acquired for state highway purposes, in the manner the secretary deems most expedient, when such real*

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real estate or interest therein is no longer needed or used for state highway purposes. The secretary may exchange the right-of-way in which such secretary has an interest or title greater than an easement for new or other right-of-way." [Emphasis supplied.]

Paragraph (2) of the subsection prescribes the procedure to be followed whenever the Secretary determines that any real estate should be disposed of by sale.

The clear purport of the underscored language is to vest in the Secretary the broadest possible legal authority to dispose of any real estate or interest therein, acquire for highway purposes, "in the manner the secretary deems most expedient." If the Secretary determines that any real estate should be disposed of by sale, the procedure followed in the remainder of the section must be followed. Clearly, however, the Secretary may determine it to be expedient to dispose of certain real estate by means other than sale. In this instance, it is proposed to convey certain property in consideration of the conveyance of other property, located on the same area, to the Secretary to be used for shop site purposes.

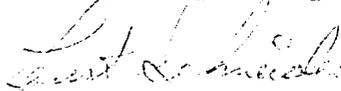
It may be argued, perhaps, that because of the specific provision for exchange of right-of-way, exchange is not a permitted mode of disposal of other real estate which is available at the option of the Secretary. The argument is based, presumptively, on the rule *expressio unius est exclusio alterius*, that by granting precise authority to exchange right-of-way, this mode of disposal is impliedly excluded as applied to other real estate or interests therein. The rule is merely one for the determination of legislative intent. In *Johnson v. General Motors Corp.*, 199 Kan. 720, 433 P.2d 585 (1967), the court stated thus:

"Generally, this maxim may be used in the interpretation and construction of statutes when the intention of the lawmaking body is not otherwise clear However, it is merely an auxiliary rule of statutory construction which is not conclusive; it should be applied only as a means of discovering legislative intent not otherwise manifest, and should never be permitted to defeat the plainly indicated purpose of the legislature."
199 Kan. at 722.

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There is no ambiguity in the quoted provision. Indeed, the underscored language appears to be purposefully comprehensive to vest clearly in the Secretary the broadest possible legal authority to dispose of real estate held for highway purposes in the manner deemed most expedient for the conduct of the affairs of the Department of Transportation. Exchange is clearly a lawful and permitted mode of disposal, and the Secretary may, in my judgment, convey property held in fee simple absolute for shop site purposes, in consideration of the exchange to the Secretary of other real property in fee simple absolute to be used for the same purposes. The rule of *expressio unius est exclusio alterius* should be invoked to dispel ambiguity, and not to create it where none exists. The first sentence of K.S.A. 1975 Supp. 68-413(d)(1) is clear, and supports the authority to exchange property vested thereby in the Secretary.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj