



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

August 24, 1977

ATTORNEY GENERAL OPINION NO. 77- 282

Mr. Gordon R. Olson
Nemaha County Attorney
Nemaha County Courthouse
Seneca, Kansas 66538

Re: Counties--Jails--Sale

Synopsis: Whenever a county jail is found to be unfit for the keeping of prisoners, and the board of county commissioners determine to sell said property, the sale must be held in accordance with K.S.A. 19-1924 and -1925.

* * *

Dear Mr. Olson:

You inquire concerning the procedure to be followed in the sale of the Nemaha County jail. K.S.A. 19-1924 provides in pertinent part thus:

"Whenever any county jail . . . has been condemned as unfit for county jail purposes . . . the board of county commissioners of said county . . . are hereby authorized to sell and dispose of said old jail . . . and the real estate belonging thereto at not less than three-fourths of its appraised value"

Thirty days notice must be given by publication in the official paper of the county of said jail. The appraised value is to be determined under K.S.A. 19-1925 by three appraisers to be appointed

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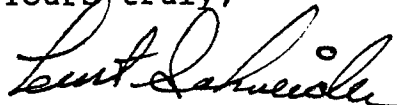
by the judge of the district court, upon written application therefor by the board of county commissioners. After reviewing the property, the appraisers are required to file their report with the clerk of the district court, who must then give thirty days notice thereof in the official paper of the county, of a hearing before the court for confirmation of the appraisal. If 25 or more resident taxpayers of the county file written objections to the appraisal, the court must, at the confirmation hearing, determine if the appraisal is fair and just, and in that event, approve the same, or if the court determines the appraisal to be unfair, the court shall make its own finding of the actual value of the property, which shall be conclusive.

You advise that the jail has never been officially condemned by any governmental body, and thus, the question is raised whether the statutory procedure outlined above must be followed in the sale of the county jail. In 1909, at the time the cited statutes were enacted, there was no formal statutory procedure, so far as can be determined, for the determination that a jail is unfit for the keeping of prisoners. Thus, in my judgment, the reference in K.S.A. 19-1924 does not refer to a formal judicial proceeding in which the jail is "condemned" as unfit for housing prisoners. In my judgment, the term "condemned" refers to any official finding as a matter of fact that the jail is unfit for the keeping of prisoners. In Opinion No. 61-331, dated October 19, 1961, Attorney General William Ferguson concluded that this finding might be made by the board of county commissioners themselves, stating that in the exercise of its authority as custodian of county property, the county board has authority to adopt a resolution condemning the jail as unfit for jail purposes. I concur fully in that opinion. A finding by the Secretary of Corrections that the facility is unfit for the keeping of prisoners serves exactly the same legal purpose, in my judgment. This 1909 enactment was designed to prescribe a procedure to be followed in the sale of a jail which was found to be unfit for keeping prisoners. The legislature did not then, nor has it since, prescribed any judicial proceeding to be necessary for such a finding. The use of the term "condemned" in the statute does not refer, in my judgment, to any legal proceeding. Generally, condemnation actions are instituted for the taking of private property for public use. Obviously, no such condemnation proceeding would be necessary to determine that a jail is or is not fit for keeping prisoners. The board of county commissioners as the custodians of county property, are entitled to determine whether the jail is fit or unfit for the keeping of prisoners, and the Secretary of Corrections is authorized to make advisory recommendations regarding jails. K.S.A. 1976 Supp. 75-5228. If the jail in fact

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is unfit for keeping prisoners, and is no longer used for that purpose precisely because it is unfit, K.S.A. 19-1924 and -1925 prescribe the procedure which must be followed for disposition of the property, and the board of county commissioners has no authority to sell the property other than in accordance therewith.

Yours truly,

A handwritten signature in cursive script, appearing to read "Curt T. Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj