



STATE OF KANSAS

## Office of the Attorney General

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*Curt T. Schneider*  
Attorney General

June 12, 1978

ATTORNEY GENERAL OPINION NO. 78-186

Mr. Robert W. Manske  
Woodson County Attorney  
Post Office Box 100  
Yates Center, Kansas 66783

Re: Counties--Streets--Disposition

Synopsis: The board of county commissioners holds title to a street which is duly dedicated to the public use in trust for the public, and title to the property thus dedicated is not vested in the board for its disposition as it deems fit. It holds the title in trust only, and has no authority to dispose or relinquish of that title to another party.

\* \* \*

Dear Mr. Manske:

You advise that the Yates Center Housing Authority is in the process of constructing low cost housing for the elderly, with financial assistance from the FHA. The units are being built on property owned by the Authority in the City of Yates Center. The city has vacated a street and alley on this property pursuant to its authority to do so. The Authority has requested that the board of county commissioners furnish it a quit claim deed for the street and alley, citing K.S.A. 12-406 and *J & S Building Co. v. Columbian Title and Trust Company*, 1 K.Ct.App.2d 228 (1977). You inquire whether the county has express statutory authority to make such a conveyance and, if not, whether it may do so by the exercise of its statutory home rule authority.

In *Gadarl v. City of Humboldt*, 87 Kan. 41, 123 Pac. 764 (1912), the court states thus:

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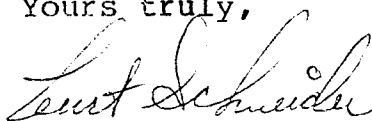
"The filing and recording of the plat operated to convey the fee of the street to the county for the public purpose for which it was intended. . . . No formal acceptance by the city or user by the public is necessary to perfect a statutory dedication of this character. The fee passes from the owner beyond power of resumption and vests *absolutely in the county, forever, in trust for public use.*" [Emphasis supplied.]

The board of county commissioners holds absolute title to the street, in trust, for the benefit of the public. While it is clearly, of course, within the authority of the city to vacate the street, I find no Kansas case dealing squarely with the authority of a board of county commissioners to convey to a private party or a nonprofit entity absolute fee title to a public way which has been dedicated to the public use and ownership, or, alternatively, to relinquish the title of the county to such a party by a quitclaim deed. In *A.T. & S.F. Rld. Co. v. Luening*, 52 Kan. 732, 35 Pac. 801 (1894), the court stated thus:

"In this state, the fee of all real estate, when dedicated to public use by the proprietors of any town or city, vests absolutely in the county wherein such real estate lies, and the county forever afterward holds the property in trust for such use. The county holds the property as a mere agent of the public, and in trust for the public use." 52 Kan. at 735.

The board of county commissioners holds title to the street solely as an agent of the public, in trust; title to the street thus dedicated to the public use is not the property of the board to dispose of as it will. The board has no statutory authority to convey or relinquish the public ownership of the street, and in my judgment, it has no such authority which it may exercise pursuant to its statutory home rule authority under K.S.A. 19-101 *et seq.*

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj