



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 79-41

The Honorable Patrick B. Augustine
State Representative, 110th District
Kansas House of Representatives
State Capitol
Topeka, Kansas 66612

Re: Cities and Municipalities--Additions, Vacation
and Lot Frontage (Annexation by Cities)--Annexa-
tion of State-owned Property, Consent

Synopsis: The governing body of any city may by ordinance
annex state-owned property without prior consent
of the State of Kansas. However, should the
City of Hays so desire, it may annex the Frontier
Historical Park without formal resolution and
public hearing required by statute, by obtaining
the consent of the custodian of the state property,
the secretary of the State Historical Society,
subject to approval of the State Board of Regents.

* * *

Dear Representative Augustine:

You have advised that the City of Hays seeks to annex certain
state-owned property and you have asked for our opinion as
to which state officer has authority to consent thereto or
whether specific legislation is necessary to authorize such
consent. The state property involved is the Frontier Historical
Park located to the south of the city limits of Hays, Kansas.
Pursuant to K.S.A. 76-2007a through 76-2007c, inclusive, and
K.S.A. 1978 Supp. 76-2007d through 76-2007f, inclusive, the
State of Kansas has leased the park to the city for certain
designated uses.

Initially, we note that K.S.A. 12-519 et seq. empowers the City of Hays to annex the real estate in question without prior consent of the State of Kansas. K.S.A. 12-520 provides, in pertinent part,

"Except as otherwise hereinafter provided, the governing body of any city may by ordinance annex land to such city if any one or more of the following conditions exist: . . . (c) The land adjoins a city and is owned by or held in trust for any governmental unit other than another city."

K.S.A. 12-520a thereafter provides that a city desiring to annex land pursuant to the aforementioned statute shall first adopt a resolution which gives notice of the city's intentions and of a public hearing on the proposed annexation. The city is required to notify by certified mail all landowners who would be affected by the proposed annexation that a hearing will be held, and to publish such notice in the official city newspaper, and thereafter to hold such hearing in the time and manner provided. However, subsection (e) of that section allows the city to avoid that formal procedure as follows:

"No resolution, notice and public hearing required under the provisions of this section shall be required as a prerequisite to the annexation of . . . land all of the owners of which petition for or consent thereto in writing."

Accordingly, the City of Hays may annex this state-owned park without prior consent of the State of Kansas unless it seeks to avoid the formal procedure for annexation by obtaining consent pursuant to subsection (e) of K.S.A. 12-520a. Consent of the "governmental unit" landowner is not a prerequisite to annexation except under subsection (e).

If the City of Hays elects to obtain consent of the State of Kansas to annex the historical park and thereby avoid use of the formal resolution-public hearing procedure as discussed above, the city should obtain such consent in writing from the secretary of the State Historical Society, and approval therefor by the State Board of Regents. It is our opinion that no special legislation to authorize such consent is necessary, because Kansas law already provides that the

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secretary of the State Historical Society is the lawful custodian of the park premises and in that capacity is empowered to exercise discretion in such matters on behalf of the State of Kansas. As a general rule,

"[d]iscretion generally is conferred upon officers and boards who are vested by the state constitution with the control, management, and disposition of state lands, and on matters of policy, expediency, and the business interests of the state, they are the sole and exclusive judges within the provisions of the constitution or statute." 63 Am.Jur.2d Public Lands §108.

The custodian's powers are defined at K.S.A. 1978 Supp. 76-2007 which provides, in pertinent part:

"[S]aid park [Frontier Historical Park] shall at all times be subject to the active administration, supervision and control of the secretary of the state historical society. The custody and management thereof shall be in such secretary, with the approval of the state board of regents. The secretary of the state historical society, subject to revision by the state board of regents . . . may permit such use of the ground or any portion thereof, as is not inconsistent with this act or the act of which this section is amendatory or with the purposes for which said grounds have been set aside."

We find nothing in the statute or elsewhere in the act to preclude the secretary and the board from granting consent for annexation of the park by the City of Hays. We do not have the aforementioned lease between the city and the state before us, but so long as such annexation does not interfere with the performance of prescribed duties of the custodian or with operation of the lease, we conclude that the secretary of the

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State Historical Society is the appropriate state officer with legal authority to grant consent for annexation on behalf of the State of Kansas, subject to approval by the Board of Regents.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk