April 11, 1979

Mr. Robert A. Gottschalk, Secretary
Board of State Fair Managers
20th & Poplar
Hutchinson, Kansas 67501

Re: Agriculture--State Fair--Contracts for Use of State Fairgrounds by City of Hutchinson

Synopsis: Pursuant to K.S.A. 2-219, the Board of State Fair Managers may enter into a contractual agreement with the City of Hutchinson, Kansas, whereby said city is granted a license to construct, maintain, and use a surfaced roadway across the fairground property.

Dear Mr. Gottschalk:

You request our opinion as to whether the Board of State Fair Managers has authority to enter into a contractual agreement with the City of Hutchinson, Kansas, for the purpose of constructing a surfaced road across fairground property. Further, you indicate that construction of such a road would benefit both the operation of the State Fair and the traffic flow of the City of Hutchinson.

Analysis of your inquiry begins with the provisions of K.S.A. 2-202, which, in relevant part, provides:

"The tract of land conveyed by the county of Reno to the state of Kansas for fair purposes . . . shall be held by the state of Kansas as a state fairgrounds, and for other
In addition, K.S.A. 2-219 provides:

"When the use of the fairgrounds is not deemed necessary for use for fair purposes, the board of fair managers may enter into a contract, lease or agreement with the city of Hutchinson, Kansas, permitting the use of all or a portion of such fairgrounds, or building located thereon for such uses and on such terms and conditions as may be agreed upon: Provided, That such contract lease or agreement shall be in writing." (Emphasis added.)

It is apparent that the above-quoted statutes grant to the Board of State Fair Managers the right to direct, regulate, lease, control and permit the use of the tract of land comprising the state fairgrounds. Therefore, the determination of your inquiry depends in part on whether construction of a surfaced road is a use permitted by these statutory provisions. Such determination necessarily depends upon the meaning of "use" as employed in these statutes.

In Esfeld Trucking, Inc. v. Metropolitan Insurance Co., 193 Kan. 7 (1964), the Court states:

"A detailed explanation of the definition of the word use appears in 91 C.J.S., Use, pp. 513 et seq., and includes a statement to the effect that as a noun use has been held to be synonymous with benefit and employment, and practically synonymous with enjoyment (p. 517), and as a verb, it has
Mr. Robert A. Gottschalk  
Page Three  
April 11, 1979

a well-understood meaning and a legal 
significance, having been variously defined 
as meaning to employ, to employ for any 
purpose, to employ for the attainment of 
some purpose or end, to avail one's self 
of, to convert to one's service, or to put 
to one's use or benefit, and the infinitive 
to use has also been defined as to hold, 
occupy, enjoy, or take the benefit of. 
(pp. 518-519.)" Id. at 10, 11. [Emphasis 
by court.]

Another paragraph of C.J.S. referenced in the foregoing quote 
is particularly pertinent to your inquiry and reads as follows:

"As a general rule, the 'use' of a thing 
does not mean the thing itself, but means 
that the user is to enjoy, hold, occupy, or 
have in some manner the benefit thereof, 
and in this 'use' is the right to enjoy, 
hold, or occupy, and have the fruits. 
Thus, if the thing to be used is in the 
form or shape of real estate, the use 
thereof is its occupancy or cultivation, 
ecc. . . ." [Emphasis added, footnotes 
omitted.] 91 C.J.S. Use, p. 515.

It is apparent from the foregoing that, within the context of 
K.S.A. 2-202, an agreement permitting the use of the fair-
grounds is tantamount to granting a license. The term "license," 
as it applies to real property, is a legal term of art and has 
acquired a well-settled meaning in the law. As stated in 
Black's Law Dictionary 1068 [4th ed. (1957)], the word "license," 
as it relates to real property law, means: "Permission or 
authority to do particular act or series of acts on land of 
another without possessing any estate or interest therein."

Given the above definitions of the terms "use" and "license," 
it is our opinion that the legislature intended that the 
Board of State Fair Managers have the power and authority to 
grant a license or licenses in regard to the state fairgrounds. 
That is, the legislature gave said Board the power to permit 
persons, other than the Board, "to enjoy, hold, occupy or have 
in some manner the benefit thereof." It did not, however, give 
the Board power to convey the land or any interest therein.
In our judgment, the latter requires a specific statutory grant of authority, such as that found in K.S.A. 2-215, empowering the Board to grant an easement to the City of Hutchinson.

In Stanolind Pipe Line Co. v. Ellis, 142 Kan. 102 (1935), the Court cites 9 R.C.L. 744 and 2 Tiffany on Real Property (2d Ed.) 1202, in distinguishing a license from an easement:

"'The difference between an easement and a license is thus defined in 9 R.C.L. 744:

"'The difference between an easement and a license is that the former implies an interest in land, while the latter does not. An easement must be created by deed or prescription, while a license may be by parol. The former is a permanent interest in the realty, while the latter is a personal privilege to do some act or series of acts upon the land of another without possessing any estate therein, and is generally revocable at the will of the owner of the land in which it is to be enjoyed, by the death of the licensor, or by his conveyance of the lands to another, or by whatever would deprive him of doing the acts in question or giving permission to others to do them.'"

Id. at 105.

In our judgment, K.S.A. 2-202 and 2-219 authorize the Board to permit the use and occupation of the state fairgrounds but do not authorize conveying an easement or other interest in such land. Thus, we are of the opinion that, pursuant to K.S.A. 2-219, the Board of State Fair Managers may enter into a contractual agreement with the City of Hutchinson, Kansas, whereby said Board grants a license to said city to construct, maintain and use a surfaced road across the state fairgrounds. Such agreement, however, should clearly and unequivocally state that the Board is granting only a license, not an easement or other interest in the land.

Very truly yours,

Robert T. Stephan
Attorney General of Kansas

Rodney J. Bieker
Assistant Attorney General