



STATE OF KANSAS

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April 18, 1979

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ATTORNEY GENERAL OPINION NO. 79-63

Mr. A. C. Cooke  
P.O. Box 8228  
Prairie Village, Kansas 66208

Re: Counties and County Officers--Parks, Museums,  
Lakes, and Recreational Grounds--Acquisition  
of Lands

Synopsis: A county may enter into contracts whereby options to purchase possible park sites are acquired, and, in the absence of an abuse of discretion, the possible forfeiture of public moneys (in the event the options are not exercised) is not a matter of judicial concern.

\* \* \*

Dear Mr. Cooke:

In your letter of March 29, 1979, you state that Johnson County Park and Recreation District is considering submitting to the electors of said district a proposal to issue bonds for the purchase and improvement of an additional park in the county. You request our opinion as to whether the Board of County Commissioners of Johnson County may enter into option contracts on certain tracts of land (which would be a tentative park site) whereby public moneys would be forfeited if the voters rejected the bond issue.

K.S.A. 1978 Supp. 19-2801 provides, in part, that any county "may establish and maintain public parks" and "may take and acquire title to lands, including any and all rights thereon,

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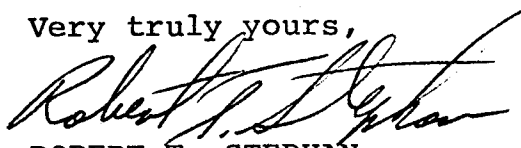
for the purpose of establishing the same by condemnation under the provisions of the general eminent domain procedure act or by gift, devise, purchase or in any other manner." [Emphasis added.]

It would appear that the general intent of this statute is to facilitate the acquisition of lands to be used as public parks, and it is apparent that considerable discretion is delegated to county officers as to the means to be used to accomplish this goal. Although the statute does not expressly authorize the execution of option contracts, the underscored portion, set forth above, might reasonably be construed to imply such authority. Although there are no cases in which said statute has been construed, it has been held that a similarly structured Missouri statute authorized municipalities "to use any method available in acquiring land." State v. Riley, 417 S.W.2d 1, 5 (1967). Also, the North Carolina court has apparently approved the execution of option contracts under a "blanket authorization to acquire sites." Philbrook v. Housing Authority, 269 N.C. 598, 601 (1967). We conclude that K.S.A. 1978 Supp. 19-2801 impliedly authorizes the execution of option contracts.

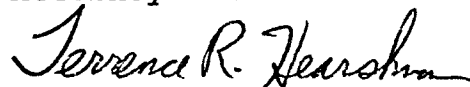
In the absence of fraud, the possible forfeiture of public moneys (if the bond issue is not approved by the voters) is not a judicial concern. Questions of whether a contract is wise or whether its terms are advantageous are solely for county officers. 56 Am.Jur.2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 495. On the other hand, a contract will be declared void if there has been an abuse of discretion on the part of the officers executing it, or if it is tainted with fraud. Id.

In summary, it is our opinion that the Board of County Commissioners may enter into contracts whereby options to purchase possible park sites are acquired, and that, in the absence of an abuse of discretion, the possible forfeiture of public moneys (in the event the options are not exercised) is not a matter of judicial concern.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General