



STATE OF KANSAS

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June 15, 1979

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ATTORNEY GENERAL OPINION NO. 79-118

Mr. Philip E. Winter
Assistant County Attorney
Lyon County Courthouse
Emporia, Kansas 66801

Re: Counties and County Officers--County Buildings--
Acquisition of Site by Condemnation

Synopsis: K.S.A. 19-15,114 et seq. is a uniform act establishing the procedure by which counties may acquire public buildings or sites therefor by gift, purchase or condemnation. A charter resolution which would establish the power of eminent domain in Lyon County for such purposes is unnecessary. Since the state law governing said county function is an act which applies uniformly to all counties, the county may only exercise its home rule authority in this regard subject to, and not at variance with, provisions of the uniform state law.

* * *

Dear Mr. Winter:

You have submitted for our examination and opinion a copy of a proposed charter resolution by which the Lyon County Board of County Commissioners would establish the power of eminent domain for Lyon County "for the purpose of providing additional ground necessary for the expansion of the Lyon County courthouse or to house required county offices."

Mr. Philip E. Winter
Page Two
June 15, 1979

The proposed resolution states, in pertinent part, that

"G.S. 19-1501 establishing the power of Eminent Domain in the Board of County Commissioners was repealed in Chapter 112 of the 1968 Session Laws of the State of Kansas, . . . no statutory authority exists other than that authority set forth in K.S.A. 19-101a [by which a county may exercise the power of eminent domain]."

While you have correctly noted that G.S. 1949 19-1501, which provision established the power of eminent domain in counties to "obtain a suitable site for a courthouse, jail or other county building," was repealed in 1968 (L. 1968, ch. 112, §1), we invite your consideration of K.S.A. 19-15,114 through 19-15,118, inclusive. K.S.A. 19-15,115 provides, in part:

"The board of county commissioners of any county may when it deems necessary erect or construct, acquire by gift, purchase, condemnation in fee simple or lease, a public building or buildings and may acquire any necessary site therefor by gift, purchase or condemnation in fee simple, or make use of any site or sites previously acquired by the county under authority of any other statute and may improve any existing public building."
(Emphasis added.)

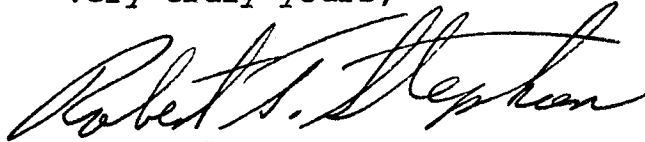
K.S.A. 19-15,114(a) defines "public building" as "any building or structure determined by the board of county commissioners to be necessary to a county for any public county purpose." K.S.A. 1978 Supp. 19-15,116 (as amended by Section 89 of 1979 Substitute for Senate Bill 454) provides the methods by which the construction or acquisition of such public building may be financed.

In view of the above-noted statutory procedure by which the Lyon County Board of County Commissioners may obtain by gift, purchase or condemnation additional ground deemed necessary for expansion of the courthouse and for additional county office space, it is our judgment that the proposed charter resolution establishing the power of eminent domain is unnecessary.

Mr. Philip E. Winter
Page Three
June 15, 1979

Moreover, we conclude that since K.S.A. 19-15,114 et seq. is an act of the legislature which applies uniformly to all counties relative to the county function in question, the county may only exercise its home rule authority in this regard subject to, and not at variance with, provisions of the uniform state law.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk