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August 24, 1979

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ATTORNEY GENERAL OPINION NO. 79-189

Mr. Edward J. Mayfield
Wyandotte County Clerk
Wyandotte County Courthouse
Kansas City, Kansas 66101

Re: Cities and Municipalities--Planning and Zoning--
Plats, Industrial Developments

Synopsis: K.S.A. 12-705b requires that a city's subdivisions must provide that all landowners who propose to develop and lay out subdivisions of their tracts, and to dedicate streets, alleys, parks and other property in conjunction with such development, shall execute and file plats and any replats as may be necessary when the original plat's lot and street configurations are changed. However, industrially zoned developments may be divided into two or more tracts without replatting. If a landowner or developer fails or neglects to execute and record a plat pursuant to K.S.A. 12-705b, the county clerk may refuse to process for the assessment rolls the purchasers' deeds for conveyances of tracts or parcels of the unplatted subdivision, if such instruments are not "sufficiently certain and accurate," and if necessary, may sua sponte proceed to execute and record a plat of such subdivision as provided by K.S.A. 79-405 et seq.

* * *

Dear Mr. Mayfield:

You have asked for our interpretation of K.S.A. 12-705b. Specifically, your principal concern is whether owners of land who subdivide their tracts for industrial development purposes are required by that statute to make and submit plats of such tracts to insure conformity with municipal subdivision regulations.

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K.S.A. 12-705b provides, in pertinent part:

"Whenever any such regulations governing the subdivision of land under the provisions of this act shall have been adopted, the owner or owners of any land located within the area governed by such regulations subdividing the same into lots and blocks or tracts or parcels, for the purpose of laying out any subdivisions, suburban lots, building lots, tracts or parcels or any owner of any land establishing any street, alley, park or other property intended for public use or for the use of purchasers or owners of lots, tracts or parcels of land fronting thereon or adjacent thereto, shall cause a plat to be made which shall accurately describe the subdivision, lots, tracts or parcels of land giving the location and dimensions thereof or the location and dimensions of all streets, alleys, parks or other properties intended to be dedicated to public use or for the use of purchasers or owners of lots, tracts or parcels of land fronting thereon or adjacent thereto and every such plat shall be duly acknowledged by the owner or owners thereof . . . Any regulations adopted by a governing body with reference to subdividing lots shall provide for the issuance of building permits on lots divided into not more than two (2) tracts without having to replat said lot, provided that the resulting tracts shall not again be divided without replatting: Provided, That such regulations shall provide that lots zoned for industrial purposes may be divided into two (2) or more tracts without replatting such lot."

You advise that certain cities in Wyandotte County have interpreted K.S.A. 12-705b to mean that industrial subdivision developments are exempt from the platting requirements of that statute. You further advise, however, that cities in Sedgwick, Shawnee and Johnson counties concur in your interpretation of the statute, and that all have ordinances explicitly requiring initial plats of industrial sites but exempting such developments from replatting requirements imposed for non-industrial developments, which exemption is expressly provided by the statute in question.

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Assuming the correctness of your interpretation of the statute, you also have asked what remedies are available to the county clerk to mandate compliance with the statute in furtherance of your office's interest in maintaining the integrity and accuracy of land records.

We agree with your interpretation of K.S.A. 12-705b, and it is our opinion that your interpretation is the only logical construction of the statute. The statute very plainly provides that "the owner or owners of any land located within the area governed by [subdivision] regulations . . . shall cause a plat to be made." (Emphasis added.) After the landowner or developer makes the plat and submits it to the city planning commission (or to the joint committee for subdivision regulation, if one has been established pursuant to K.S.A. 12-705a), the statute further provides that that body shall review the plat to determine its conformity with the provisions of subdivision regulations. If the plat conforms to the requirements of the regulations, the reviewing body shall endorse its approval on the plat, and the city may proceed to issue building permits.

If the landowner or developer later desires to further divide the originally platted tract, the statute imposes an additional requirement, with an important exception. The statute clearly provides that the landowner must replat the tract if the original plat is changed by subdivision of the tract into more than two smaller tracts. That requirement applies to all subdivisions except those "zoned for industrial purposes." Industrially zoned developments "may be divided into two (2) or more tracts without replatting such lot."

The above-cited proviso, which exempts industrial developments from the replatting requirement, is that portion of the statute which has prompted your inquiry. You advise that the governing bodies of Bonner Springs and Kansas City, Kansas, have interpreted that proviso as a "blanket exemption" from any platting for industrial development. It is our opinion that such an interpretation is clearly erroneous. The statute requires that owners of "any land" who propose to lay out "any subdivisions . . . shall cause a plat to be made." The proviso unquestionably contemplates that the industrial developer shall execute and file an initial plat. The industrial developer is only exempt from replatting any further division of the originally platted tract.

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You next inquire whether, under K.S.A. 12-705b, city ordinances must stipulate that a replat is necessary whenever lots, tracts or parcels are sold and/or new streets dedicated that do not conform to the original plat's lot and street configuration. The statute makes mention of replatting only once. As discussed in the foregoing, except for industrially zoned developments, replatting is required when the originally platted tract is divided into more than two tracts. The statute does not expressly require that a replat is necessary every time a change is made in the original plat configurations, although a reasonable argument may be made that the statute so implies. Note carefully that K.S.A. 12-705b provides that the landowner subdividing a tract into lots and blocks or tracts or parcels, for the purpose of laying out any subdivisions, suburban lots, tracts or parcels or establishing any street, alley, park or other property intended for public use

"shall cause a plat to be made which shall accurately describe the subdivision, lots, tracts or parcels [and] all streets, alleys, parks or other properties . . . to be dedicated to public use or for the use of purchasers or owners of lots, tracts, or parcels of land fronting thereon."

Thus, as you have correctly noted, the statute impliedly requires that a replat is necessary when the lot and street configurations reported on the original plat are changed by divisions of the tract and dedications of streets, alleys, parks, and other property occurring after the original plat is submitted and approved. Industrially zoned developments are exempt from the replatting requirement imposed on landowners for further divisions of the tract, but are not exempt, in our judgment, from the statutory requirement for platting when new streets, parks and other such property are dedicated to public use which dedication causes a change in the original plat.

Lastly, in consideration of the county clerk's statutory obligations to maintain the integrity and accuracy of land records and to prepare real estate assessment rolls for taxation purposes, you have also asked what remedies are available to the county clerk to mandate compliance with K.S.A. 12-705b and to force cities to fulfill their statutory responsibilities under that provision. You inquire specifically whether the county clerk may "refuse to process for the assessment roll deeds and other instruments that are metes and bounds descriptions over vacated streets, multiple subdivision, etc." of parcels of a development which has not been platted or replatted.

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The provisions of K.S.A. 79-405 et seq. offer at least one remedy to the county clerk when plats of subdivisions have not been made pursuant to the statute in question. K.S.A. 79-405 provides, as follows:

"Whenever any subdivision of land of forty acres or less, or any lot or subdivision, is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels thereof cannot be made sufficiently certain and accurate for the purpose of assessment and taxation without noting the metes and bounds of the same, the county clerk shall cause to be made and recorded, a plat of such tract or lot, with its several subdivisions, as hereinbefore provided."

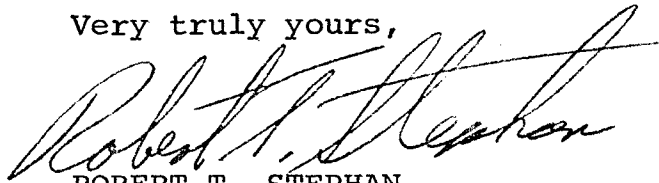
K.S.A. 79-406 and 79-407 provide that, upon proper notice of demand upon property owners who have failed and neglected to execute and record a plat, and after opportunity for appeal, the county clerk shall sua sponte cause a plat to be made and assess the cost thereof pro rata among the various landowners affected. The county clerk is thus empowered to facilitate the performance of his or her obligations imposed by K.S.A. 79-408, i.e., preparation of real estate assessment rolls for purposes of assessment and taxation, which rolls "shall contain a correct and pertinent description of each piece, parcel or lot of real property . . . in the respective townships or cities" in the county.

Therefore, if the landowner or developer fails or neglects to execute and record a plat as he or she is bound to do pursuant to K.S.A. 12-705b, the county clerk may refuse to process for the assessment rolls purchasers' deeds for conveyances of tracts or parcels of the unplatted subdivision if such instruments are not "sufficiently certain and accurate for the purpose of assessment and taxation." If necessary, the county clerk shall proceed to execute and record a plat of such subdivision as provided by K.S.A. 79-405 et seq.

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Inasmuch as K.S.A. 12-705b provides that local subdivision regulations shall require landowners and developers to plat and to replat as may be necessary, as discussed above, an action in mandamus may lie against the governing bodies of those cities whose regulations do not so provide, to compel them to fulfill the obligations imposed upon them by the statute in question. You should consult the district attorney for advice concerning the appropriateness of this remedy, if the above-discussed alternative does not provide an adequate means of securing compliance.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steve Carr
Assistant Attorney General

RTS:WRA:SC:gk