



RECEIVED  
KANSAS  
ATTORNEY GENERAL  
21 8 15 AM '86

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

October 5, 1981

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 81-226

Robert Mikesic  
Developmental Services of NW Kansas  
P. O. Box 1016  
Hays, Kansas 67601

Re: Personal and Real Property -- Public Buildings --  
Renovations of Curbs and Sidewalks; Handicapped  
Access

Synopsis: In computing the replacement value of a curb or  
sidewalk for purposes of K.S.A. 1980 Supp. 58-1301  
et seq., as amended by L. 1981, ch. 343, a lineal  
block measurement is to be used. Cited herein:  
K.S.A. 12-696, 31-150, 32-154, 39-1101, 44-1001,  
K.S.A. 1980 Supp. 58-1301, as amended by L. 1981,  
ch. 343, 58-1310, 75-3764.

\* \* \*

Dear Mr. Mikesic:

You inquire regarding the renovation of curbs and sidewalks  
pursuant to the requirements of K.S.A. 1980 Supp. 58-1301 et  
seq., as amended. Specifically, you desire to know what formula  
is to be used under this law in determining whether curbs and  
sidewalks which are renovated must include handicapped access  
ramps.

K.S.A. 1980 Supp. 58-1301, as amended by L. 1981, ch. 343, §1,  
requires in part:

"All public buildings and facilities in this  
state, and additions thereto, and all govern-  
mental buildings and facilities in this state,  
and additions thereto, shall conform to the  
American national standards institute specifi-  
cations for making buildings and facilities  
accessible to, and usable by, the physically  
handicapped . . . ."

Robert Mikesic

Page Two

Your concern arises regarding the renovation of curbs and sidewalks which are included in the definitions of "governmental building or facility" and "public building or facility." K.S.A. 1980 Supp. 58-1310(b), (d). That same statute defines "renovate" as follows:

"'Renovate' means reconstruct or remodel in an amount equal to twenty-five percent (25%) or more of the replacement value of a building or facility but shall not include construction of an addition to a building or facility or acquisition and installation of insulation, as defined by K.S.A. 1978 Supp. 79-32,117 and amendments thereto, or a solar system, as defined by K.S.A. 79-32,169 and amendments thereto." (Emphasis added.) K.S.A. 1980 Supp. 58-1310(e).

The question with which we are presented is what formula should be followed in determining when sidewalks or curbs needing repair require a substantial enough degree of renovation to warrant replacement of the curb and a portion of the sidewalk with a curb ramp. When renovation of a facility, such as a curb or sidewalk, amounts to 25 percent or more of the replacement value of the facility, K.S.A. 58-1301 requires the installation of handicapped accessibility modifications, such as wheelchair ramps or curb cuts.

"Replacement value" and similar terms have been variously defined. For example, in State Highway Commission v. Demarest, 263 Ore. 590, 608, 503 P.2d 682 (1972), "replacement cost" was defined as the present cost of replacing an existing improvement with one having the same utility. In Burns v. Herberger, 498 P.2d 536, 540 (Ariz. 1972), the term "replacement method" as used for real estate appraisals was said to be the current cost of reproducing property, less appreciation and depreciation from all sources. Replacement value of a clearly defined structure such as a building is readily ascertainable; however, in the case of sidewalks and curbs needing repair, the amount of the facility to be taken into consideration for the calculation of replacement value is not clearly defined by the Act, and, for purposes of K.S.A. 58-1310(e), the Kansas Legislature has not expressly indicated the extent of the facility (curbs or sidewalks) upon which the replacement value figure is to be based.

In amending K.S.A. 1980 Supp. 58-1301 et seq. the legislature repealed K.S.A. 12-696 (see L. 1978, ch. 213, §9), which concerned curb and sidewalk handicapped accessibility standards. The prior legislation stipulated that the standard for the construction of curbs and sidewalks on each side of any

street or road, or any connecting street or road for which curbs and sidewalks had been prescribed by the governing body of any municipality having jurisdiction thereover, required no less than two curb ramps per lineal block. It is apparent from the face of the prior legislation that the legislature was using the lineal block measurement and basing the number of accessibility modifications required on that measurement. Although K.S.A. 12-696 was repealed with the enactment of K.S.A. 58-1301, the new law had as its purpose the adoption of the ANSI standards which deal with the measurement of individual accessibility modification elements, e.g., the incline, length and width of wheelchair ramps at locations where prescribed. The ANSI standards do not provide specific guidance regarding calculations to be used in the application of the Kansas formula, hence, they neither contradict the lineal block measurement nor provide an alternative. This inherent vagueness must be resolved in order to clarify the commands of the Kansas Statute with respect to sidewalk and curb renovation.

Where a portion of a statute is so vague that it cannot be administered by the courts, it is subject to constitutional scrutiny when the legislative intent is not manifest. State v. Goza, 4 Kan. App.2d 309 (1980). Judicial construction of a statute should be based upon the legislative intent, to be determined from the whole act, and should be in accordance with the general purpose and intent of the entire statute. State ex rel. Stephan v. Martin, 227 Kan. 456, 462 (1980). In construing statutes, the purpose and intent of the legislature governs when such intent is ascertainable from the language of the statute, even though words or phrases must be added or omitted. Sterling v. Mann, 4 Kan. App.2d 520 (1980).

In determining legislative intent the courts are not limited to a mere consideration of the language used, but may look to the historical background of the enactment, circumstances attending its passage, the purpose to be accomplished and the effect the statute may have under the various constructions suggested. Brown v. Keill, 224 Kan. 195, 200 (1978); Carlson v. Carlson, 4 Kan. App.2d 63, 65 (1979); Wachholz v. Wachholz, 4 Kan. App.2d 161-163 (1979).

In 1968 the Kansas Legislature declared that it is the policy of the State of Kansas to encourage the blind and physically handicapped to participate fully in the social and economic life of the state, and to engage in remunerative employment; and further declared that such persons shall have the same rights as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways and public buildings.

K.S.A. 39-1101. There were enacted several statutes concerning the physically handicapped and the removal of architectural barriers, among which was the original Act. See K.S.A. 58-1301 and K.S.A. 12-696 concerning public buildings and sidewalks. See, also, K.S.A. 31-150, 32-154, 44-1001 et seq., and 75-3764(a).

Hence, the intention to enhance the accessibility through the removal of architectural barriers has been clearly indicated, setting out the purpose of the Act. Based upon the substantial legislative history of the Act, the intention of the legislature is readily observable, which fulfills the first rule of statutory construction which requires that legislative intent is to be given effect. Nordstrom v. City of Topeka, 228 Kan. 336 (1980). However, unless the omitted factor can be ascertained for calculation of replacement value as to curbs and sidewalks, there remains a question as to whether its language conveys a sufficient warning concerning proscribed conduct without which the statute will be vague in a constitutional sense. Morra v. State Board of Examiners of Psychiatrists, 212 Kan. 103 (1973). Thus, as here, where the intention of the legislature is clear, yet a particular term may be unclear,

"[a] liberal construction of statutes in order to effectuate their purpose is the established policy of [the Kansas] court. The function of liberal construction is called into use where there is ambiguity in the language of the statute or, in other words, where there are one or more interpretations which may fairly be made. Where clarification is required, judicial interpretation is made that will give life to the statute rather than the one which will nullify it. Errors plainly clerical in character, mere inadvertances of terminology and other similar inaccuracies or deficiencies will be disregarded or corrected where the intention of the legislature is clear and unmistakable." Russell v. Cogswell, 151 Kan. 793, 795 (1940).

In addition, the legislature is presumed to have adopted a new statute in light of, and with regard to, earlier acts on the same subject. St. Louis I.M. & S.R. Co., v. U.S., 251 U.S. 198, 207, 64 L.Ed. 225 (1919). It has been held that an earlier statute on the same subject which has been repealed may be considered in construing an existing law. Ex Parte Kang-Gi-Shun-Ca, 109 U.S. 556, 561, 27 L.Ed. 1030 (1883); Viterbo v. Friedlander, 120 U.S. 707, 725, 726, 30 L.Ed. 776 (1887). The presumption is, then, that the legislature would have intended to carry over the lineal block measure to the

Robert Mikesic  
Page Five

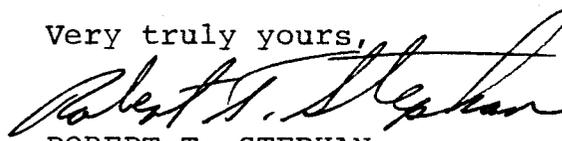
new legislation and in no way sought to give a different factor with respect to curbs and sidewalks.

As a matter of sound public policy, continued employment of the lineal block measure in the new legislation gives continuity and uniformity to the handicapped accessibility legislation adopted in Kansas. Again, from a policy standpoint, the purpose of K.S.A. 1980 Supp. 58-1301 et seq. is not unlike that expressed across the nation. Since 1974, all fifty states and the District of Columbia have, through legislation, executive orders, or building codes, required the removal of architectural barriers in certain public buildings, Report on Interim Studies to the 1978 Kansas Legislature, Vol. I, 72. Typical legislation provides that remodeling of buildings and facilities is not to be carried out solely for the purpose of providing handicapped accessibility; however, when remodeling is done and a building or facility undergoes remodeling either in whole or in part, then that portion remodeled shall conform to the handicapped accessibility requirements. See, e.g., Minn. Stat. 471.467. In Iowa, for example, for sidewalks, curbs and ramps, whether newly constructed or reconstructed, the lineal block factor is used and requires two curb cuts or ramps per lineal block. Iowa Code Ann. 601D.9.

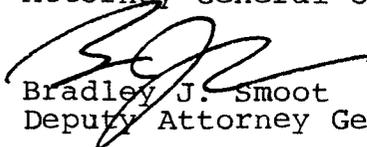
In conclusion, K.S.A. 1980 Supp. 58-1310, as amended, provides that when renovation of designated buildings and facilities amounts to 25 percent or more of the replacement value of any such facility, then handicapped accessibility modification installation is required, but the Kansas Legislature did not indicate, for purposes of that statute what extent of a facility such as a sidewalk should be used in calculating replacement value of such a facility. However, a previous statute which concerned sidewalk and curb modification standards, K.S.A. 12-696 (now repealed), used the lineal block measurement, and Kansas case law permits consideration of prior repealed legislation to clarify ambiguity in new legislation. Thus, the presumption is made that the Kansas Legislature intended the lineal block measurement to carry over to the amending legislation for purposes of K.S.A. 58-1310(e).

Therefore, it is our opinion that in computing the replacement value of a curb or sidewalk for purposes of K.S.A. 1980 Supp. 58-1301 et seq., as amended by L. 1981, ch. 343, a lineal block measurement is to be used.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Bradley J. Smoot  
Deputy Attorney General

RTS:BJS:hle