



STATE OF KANSAS

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September 22, 1983

ATTORNEY GENERAL OPINION NO. 83- 146

Keith Wilson
Assistant City Attorney
Neubauer, Sharp, McQueen,
Dreiling & Morain, P.A.
419 North Kansas
P. O. Drawer I
Liberal, Kansas 67901

Re: Cities and Municipalities--Parks, Public Squares,
Market Squares--Land for Park Purposes; Sales or
Exchanges

Synopsis: A city does not "own" park property acquired by
dedication upon filing of a plat, and may not
sell such property. Cited herein: K.S.A. 12-101,
12-406, 12-504, 12-1301, Kan. Const., Art, 12, §5.

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Dear Mr. Wilson:

You request our opinion as to the legality of proposed sale of park land by the city of Liberal. Specifically, you advise that the city "acquired" property for park purposes by dedication when a plat was filed a number of years ago, and that the governing body of the city now desires to sell a portion of the dedicated land, if the same is permissible.

K.S.A. 12-1301 provides, in part, that, after notice (and subject to protest), any city may sell any public park, public square or market square which it may own. Likewise, K.S.A. 12-101, Third, gives any city the power to sell and convey

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real estate owned by the city. Additionally, under home rule powers emanating from Article 12, §5 of the Kansas Constitution, any city has authority to engage in real estate transactions wherein a public purpose is served.

K.S.A. 12-406 concerns title to lands conveyed for public use (including parks), and provides, in part, as follows:

"Such maps and plats of such cities and towns, and additions, made, acknowledged, certified, filed and recorded with the register, shall be a sufficient conveyance to vest the fee of such parcels of land as are therein expressed, named or intended for public uses in the county in which such city or town or addition is situated, in trust and for the uses therein named, expressed or intended, and for no other use or purpose, . . . The provisions of this act shall apply to all maps or plats, heretofore or hereafter made, acknowledged, certified, filed and recorded with any such register"
(Emphasis added.)

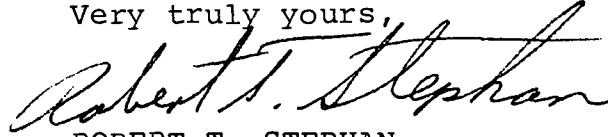
Based upon the above-quoted statute, the Kansas Supreme Court has held that, even though K.S.A. 12-1301 authorizes cities to sell park land, a city does not have "complete ownership" of "public squares" and "market squares" dedicated by the filing of a city plat, and may not sell the same. State, ex rel. v. City of Manhattan, 115 Kan. 794 (1924). Recent cases indicate that the fee title to all statutorily dedicated property (located within a city) vests in the county in trust, while the control and use of the property rests with the city. J & S Building Co. v. Columbian Title & Trust Co., 1 Kan.App.2d 228, 234 (1977); City of Council Grove v. Ossmann, 219 Kan. 120, 127 (1976). Once a public use is established by statutory dedication, the county "forever afterward" holds the property in trust for such use. J & S Building Co. v. Columbian Title & Trust Co., Id.

In accordance with the above-cited cases, it is our opinion that the city of Liberal does not "own" park property acquired by dedication upon filing of a plat, and may not sell the same. In passing, we would note that the governing body of the city of Liberal could petition to vacate the subject park, but any

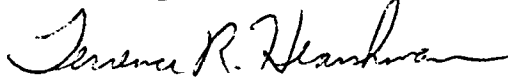
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park land so vacated would revert to abutting landowners. See
K.S.A. 12-504 et seq., and City of Hutchinson v. Danley, 88 Kan.
437 (1913).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm