



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 179

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

Re: Cities and Municipalities -- Plats of Cities and Townsites; Title to Lands Platted as Public Squares; Responsibility of County Concerning Such Lands

Synopsis: The title to property designated as a "public square" in a plat, filed and recorded pursuant to K.S.A. 12-401 et seq., vests in the county forever, to be held in trust for the public. There are no statutes authorizing the county to vacate such property absent a request from a city governing body or adjoining landowners. Cited herein: K.S.A. 12-401, 12-403, 12-406, 12-411, 12-504, K.S.A. 1982 Supp. 58-2613, K.S.A. 58-2615.

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Dear Mr. Winter:

As Assistant Lyon County Attorney you have requested an Attorney General Opinion concerning certain property in Lyon County which has been platted as a "public square." Your inquiries concern an area in Lyon County known as Plymouth, which you advise was platted a number of years ago and always has been sold as platted. Plymouth has never established a city government and remains an unincorporated part of the county. Two areas within the Plymouth plat are designated as "public squares" and apparently certain individuals residing in the area desire to use the property for that purpose. You inquire on behalf of Lyon County about the extent of the county's responsibility with regard to these "public squares". Specifically, you ask whether the county holds the property so platted in trust for the public purpose designated on the plats and whether there is a procedure by which such property may be vacated by the county.

The statutes pertaining to plats of cities and townsites appear at K.S.A. 12-401 et seq. K.S.A. 12-401 provides in relevant part:

"Before any proprietor or proprietors of any proposed city of the second or third class or of any town, or of any proposed addition to any such city or town shall record the plat of such proposed city, town or addition, he or she shall furnish to the county attorney of the county in which such proposed city or town is located, or the city attorney and governing body in case of a proposed addition, an abstract of title and the plat to the land which is to be incorporated into such city, town or addition. Such county attorney, in case of any proposed city or town, or such city attorney and governing body in case of a proposed addition, after examination duly made, shall approve or disapprove said plat.

. . . .

"The plat shall accurately and particularly set forth and describe: First, all the parcels of ground within such city or town or addition reserved for public purposes, by their boundaries, course and extent whether they be intended for avenues, streets, lanes, alleys, commons, parks or other uses; and, second, all lots intended for sale, by numbers, and their precise length and width."  
(Emphasis added.)

K.S.A. 12-403 provides that such a plat shall be recorded with the register of deeds in the county where the city or townsite is located. K.S.A. 12-406 concerns land conveyed or platted for public use and provides in relevant part:

"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.)

If the Plymouth plats were filed in accordance with these statutes, the filed and recorded plats are sufficient to vest in the county title to the land intended for public use. A number of Kansas cases have discussed land platted for public use under these statutes. The general rule is that the fee title to lands platted or designated for public use vests in the county to hold in trust for the public purpose while control of such property vests in the city. For example, in City of Council Grove v. Ossman, 219 Kan. 120 (1976), the court said:

"The fee title to all property intended for public use vests in the county in trust for the public by virtue of K.S.A. 12-406. The authority to control, use and improve the streets is vested in the city. (Citations omitted.) The dedicators no longer have title to property dedicated for public use once a plat has been approved filed and recorded. The fee title vests in the county forever." (p. 411, emphasis added.) See also State ex rel., v. City of Manhattan, 115 Kan. 794 (1924); J & S Building Co. v. Columbian Title & Trust Co., 1 Kan.App.2d 228, 234 (1977).

We can find no provision or indication in the statutes or in applicable case law to the effect that this general policy is changed because the platted area remains in an unincorporated portion of the county. Thus, in response to your first inquiry, it is our conclusion that the county holds title to the duly platted and recorded areas know as "public squares" in Plymouth in trust for the public purpose designated on the plats.

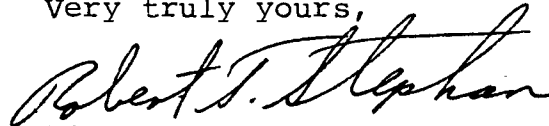
Your second inquiry asks whether there is any procedure whereby the county may vacate the property. You indicate in your letter that certain persons desire to use the property platted as a public square for that purpose. Since that use would be consistent with the designation on the plat it is unclear why the county would wish to vacate the property. In any event, it appears that the county alone may not vacate such property. First, we note there are objections to such actions as a matter of policy. In Cooper v. City of Great Bend, 200 Kan. 590, 594 (1968), the court discussed a city's efforts to vacate certain portions of a public square surrounding the county courthouse in order to utilize the land for a parking lot. Referring to K.S.A. 12-401; 12-406 and 12-411 the court said:

"These statutes have always been construed to mean that when public grounds, such as market squares and public squares, are dedicated by city plat the legal title vests in the county in trust for the public, while possession, dominion and control are vested in the city, and further that when property is so dedicated for a specific purpose it cannot ordinarily be put to any other use." (Emphasis added.)

Second, our research has failed to disclose any statutes which authorize the county, acting independently, to vacate property which it holds title to in trust for a public purpose. Such a vacation would be inconsistent with the policy expressed in the cases discussed above. We note, however, that under K.S.A. 1982 Supp. 58-2613 the owners of platted land which adjoins on both sides of any street, alley, public easement, or public reservation, or part thereof and which lies outside the limits of any incorporated city or within the limits of an incorporated city which has no governing body for 10 years or more, may petition the board of county commissioners seeking to have the land vacated. Upon hearing and after determining that the public will not suffer loss or inconvenience, the board of county commissioners may order vacation of the property. K.S.A. 58-2613 is an act supplemental to all other statutes providing for the vacation of plats and appears most applicable to the situation described in your opinion request. The statutes governing the vacation of plats within cities are found at K.S.A. 12-504 et seq. Those statutes make similar provisions for the vacation of property platted for a particular purpose upon the request of a city governing body or adjoining landowner.

We conclude that the title to property designated as a "public square" in a plat, filed and recorded pursuant to K.S.A. 12-401 et seq., vests in the county forever, to be held in trust for the public. There are no statutes authorizing the county to vacate such property absent a request from a city governing body or adjoining landowners.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Mary F. Carson  
Assistant Attorney General