



STATE OF KANSAS

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August 9, 1984

ATTORNEY GENERAL OPINION NO. 84- 82

Philip C. Lacey
McPherson City Attorney
P.O. Box 1143
McPherson, Kansas 67460

Re: Cities and Municipalities--General Provisions--
Corporate Powers

Re: Cities of the First Class--Parks, Parkways,
Boulevards and Playgrounds--Off-Street Parking
Facilities, Acquisition and Dispositions; Use
for Other Purposes

Synopsis: Pursuant to the provisions of K.S.A. 13-1388, a city governing body may, by resolution, determine that land is unsuitable as an off-street parking facility because it is no longer needed for such purpose, and discontinue use of the land as a parking facility. Upon such discontinuation of use, K.S.A. 13-1388 grants authority to a city to use land acquired by purchase (for an off-street parking facility) for other public purposes, but the statute does not mandate such use or prohibit the city from selling such property. Thus, a city may, pursuant to authority granted by K.S.A. 12-101, Third, or in accordance with home rule powers granted by Article 12, Section 5 of the Kansas Constitution, sell property acquired by purchase under the provisions of K.S.A. 13-1388. Cited herein: K.S.A. 12-101, 13-1388, Kan. Const., Art. 12, §5.

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Dear Mr. Lacey:

You request our interpretation of K.S.A. 13-1388. Specifically, you advise that the City of McPherson acquired by purchase a part of Block 56 of the City, as originally platted, for off-street parking facilities, and issued revenue bonds pursuant to K.S.A. 13-1389 for acquisition and improvement of the property. You indicate that all of the aforesaid revenue bonds have been paid, and ask whether the City may sell the subject land, if the governing body determines that it is no longer needed for an off-street parking facility.

K.S.A. 13-1388 authorizes the acquisition by purchase or condemnation of land for off-street parking facilities, and provides, in part, as follows:

"[I]f any land or lands, including the improvements placed thereon, so acquired by purchase or condemnation shall become unsuitable or unusable as an off-street parking facility, the governing body, by resolution, may discontinue the use of said land as such parking facility and use the same for other public purposes."

The above-quoted provision empowers a city to discontinue the use of an off-street parking facility if the land becomes "unsuitable" as such a facility. We have no hesitation in concluding that, pursuant to K.S.A. 13-1388, a city governing body may, by resolution, determine that land is unsuitable as an off-street parking facility because it is no longer needed for such purpose, and discontinue the use of the land as a parking facility.

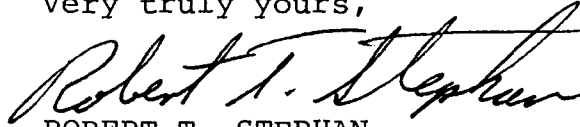
Further, upon such discontinuation of use, K.S.A. 13-1388 grants authority to a city to use land acquired by purchase (for an off-street parking facility) for other public purposes, but the statute does not mandate such use or prohibit the city from selling such property. Therefore, in our judgment a city may, pursuant to authority granted by K.S.A. 12-101, Third, or in accordance with home rule powers granted by Article 12, Section 5 of the Kansas Constitution, sell property acquired by purchase under the provisions of K.S.A. 13-1388.

Finally, we note that even if K.S.A. 13-1388 could be construed to prohibit sale of property acquired by purchase (which, in

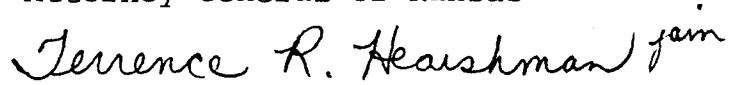
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our judgment, it cannot), said statute is part of an enactment which applies only to cities of the first and second class, and is thus subject to exemption by charter ordinance pursuant to home rule powers granted by Article 12, Section 5 of the Kansas Constitution.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:jm