



STATE OF KANSAS

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August 9, 1984

ATTORNEY GENERAL OPINION NO. 84- 83

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

Re: Cities and Municipalities--Plats of Cities and
Townsites--Maps and Plats Sufficient to Vest
Title in Lands Conveyed for Public Use

Synopsis: The filing of the 1875 plat of the City of
McPherson did not result in a statutory dedication
of Block 56 thereof to the public use of McPherson
County, and the subsequent deed conveying such
property to the County did not result in a common
law dedication to public uses. Cited herein:
K.S.A. 12-401, 12-406 (as amended by L. 1984,
ch. 65, §1).

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Dear Mr. Lacey:

You request our opinion as to whether Block 56 of the original plat of the City of McPherson has been dedicated, pursuant to statute or common law principles, to the public use of McPherson County. As the question of whether an owner intended to dedicate land to public use is one of fact [Cooper v. City of Great Bend, 200 Kan. 590 596 (1968); City of Russell v. Russell County B. & L. Assn., 154 Kan. 154, 160 (1941)], we will presume for purposes of this opinion that the information provided in your request represents all the controlling facts bearing upon an intention to dedicate the subject property. Those facts may be summarized as follows:

The original plat of the City of McPherson was recorded February 22, 1875. Block 56 thereof was not subdivided into lots, and is marked "county" on the plat. Block 65, immediately to the south of Block 56, is similarly marked "county." A deed was given (and subsequently recorded) from the McPherson Town Company in April, 1875, to the Board of County Commissioners for Blocks 56 and 65, which describes the land conveyed by block numbers and further by the language "and known as county on the record in the Office of the Register of Deeds." Block 65 is now and has been since 1894 the site of the County Courthouse. A part of Block 56 was used as a site for the County Jail until 1959, when the jail was moved to Block 65. The south 100 feet of Block 56, which was not needed for the jail, was leased by the County to the City of McPherson in 1915 as a site for a Carnegie public library, and two years later the County deeded said property to the City, subject to a right of reversion if the property at any time was not used for library purposes. This portion of Block 56 was occupied by the Carnegie Library until 1972, when it was replaced by a new city library. In 1960, the City purchased the north 200 feet of Block 56 from the County for \$58,500 (the deed to said property recorded a Journal "J," page 21), and subsequently deeded the west half of the north 200 feet of Block 56 to the Y.M.C.A. The "Y" erected a building on this parcel, and the city built a city parking lot on the east half of the north 200 feet of Block 56.

The first question presented is whether the filing of the 1875 plat of the City of McPherson accomplished a statutory dedication of Block 56 to the public use of the county. K.S.A. 12-401 provides for the recordation of plats of proposed cities and towns, or proposed additions thereto, and states in part as follows:

"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. 12-406 (as amended by L. 1984, ch. 65, §1), prescribes circumstances under which such plats vest title to parcels reserved for public use in the city, and states 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 city, in trust and for the uses therein named, expressed or intended, and for no other use or purpose."
(Emphasis added.)

Section 2 of L. 1984, ch. 65 prescribes that the fee to any parcel of land intended for public use in cities which was held in trust by a county under G.S. 1868, ch. 78, Section 6, is thereby conveyed to the city in which such property is located, in trust and for the uses therein named, expressed or intended.

The Kansas Supreme Court has rendered numerous decisions as to whether certain designations on a plat were sufficient to constitute a valid dedication under the provisions of K.S.A. 12-401 et seq. Specifically, the following designations on a plat have been held to constitute valid statutory dedications: "court-house square" [Commissioners of Franklin County v. Lathrop, 9 Kan. 453 (1872)]; "church grounds" [Board of Commissioners of Wyandotte County v. First Presbyterian Church, 30 Kan. 620 (1883)]; "public square" and "seminary" [County Commissioners of Miami County v. Wilgus, 42 Kan. 457 (1889)]; "square" [Daughters v. Riley County, 81 Kan. 548 (1910)]; "levee" [Douglas County v. City of Lawrence, 102 Kan. 656 (1918)]; "market squares" [State ex rel. Johnston v. City of Manhattan, 115 Kan. 794 (1924)]; "Lafayette Park" [Trooper v. City of Great Bend, 200 Kan. 590 (1968)].

We are unaware of any Kansas case which has considered whether designating a block "County" on a city plat constitutes a valid statutory dedication of said ground. However, an early Minnesota case held that the designation "county block" on the plat of the city of Minneapolis was not sufficient to indicate an intention to dedicate the block to the county. County Commissioners of Hennepin County v. Dayton, 17 Minn. 260 (Minn. Sup. Ct. 1871). Specifically, the court noted that such a designation could indicate that the town proprietors had merely reserved the subject ground with the intent of giving it or selling it to the county at some future date. Id. at 263.

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In our judgment, the ambiguity in the designation of block 56 on the plat of the city of McPherson does not satisfy the requirements for a valid statutory dedication. K.S.A. 12-401 requires that the plat accurately and particularly set forth and describe all parcels of ground reserved for public purposes, and K.S.A. 12-406 serves to convey to the city the fee title "of such parcels of land as are therein expressed, named or intended for public uses," in trust and "for the uses therein named, expressed or intended, and for no other use or purpose." The designation "County" on Block 56 of the subject plat does not express or restrict the use of said block. Although a general dedication to the use of the public is valid under K.S.A. 12-401 et seq., [See Daughters v. Riley County, supra], and such may have been the purpose of designating Block 56 as a "County" block, a court may not engage in speculation as to what may have been the intent of the dedicator. City of Russell v. Russell County B. & L. Assn., supra at 161. Accordingly, in our opinion, the filing of the 1875 plat of the City of McPherson did not result in a statutory dedication of Block 56 to the public use of McPherson County.

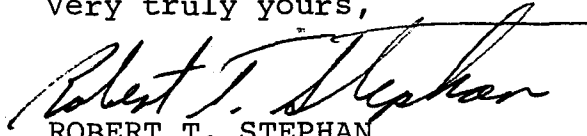
The second question posed is whether there has been a common law dedication of Block 56 to the public use of McPherson County. Such a dedication is accomplished expressly, as by deed, or impliedly, as by acts and conduct which manifest an intention to devote the property to the public use. City of Kechi v. Decker, 230 Kan. 315, 318 (1981). In this regard, you indicate (as stated above) that the 1875 deed from the McPherson Town Company to the board of county commissioners describes the property by block number and uses the language "and known as county on the record in the Office of the Register of Deeds." In our judgment, the subject deed sets forth no purpose or use for which the land is conveyed, and is not a valid common law dedication by deed. See 23 Am.Jur.2d, Dedication §28. Further, in our judgment, the very early act of the county, which was not challenged, of conveying a part of the subject block in 1917 to the city for a city library militates against any finding that there was a common law dedication of the block to the public use of the county.

In summary, it is our opinion, based solely upon the information which you have supplied, that the filing of the 1875 plat of the City of McPherson did not result in a statutory dedication

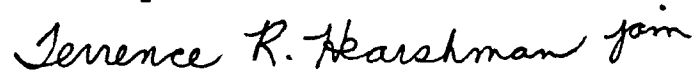
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of Block 56 thereof to the public use of McPherson County,
and that the subsequent deed conveying such property to the
county did not result in a common law dedication to public uses.

Very truly yours,



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RTS:JSS:TRH:jm