



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

September 27, 1985

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

ATTORNEY GENERAL OPINION NO. 85-130

Dale L. Pohl
Eureka City Attorney
Forbes & Pohl
P.O. Box 528
Eureka, Kansas 67045

Re: Eminent Domain--Condemnation in Cities--Cities;
Authority to Condemn; Interest Acquired

Synopsis: A city which condemns private property for the purpose of establishing an airport may lease a portion of the property for hay purposes and locate a police gun range on another part of the property. As long as the city maintains an airport upon the premises, other uses incidental to airport purposes are permissible, and such uses do not constitute an abandonment of the easement acquired in the eminent domain proceeding.

* * *

Dear Mr. Pohl:

You request our opinion as to whether certain uses of airport property are consistent with the rights acquired by the City of Eureka in an eminent domain proceeding. As indicated in Attorney General Opinion Nos. 77-17 and 85-129, the interest in airport property acquired by the City of Eureka in a 1958 condemnation action constitutes a "burden of servitude" or easement for airport purposes, and when use of the property for airport purposes is abandoned, it reverts to the owners of the fee title. You ask whether the lease of a portion of the property for hay

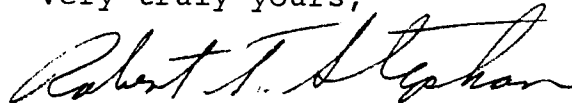
purposes and the operation of a gun range (used by both the police and the Eureka Gun Club) on another part of the property constitutes an abandonment of the easement under circumstances where the city continues to maintain an airport on the premises.

The Kansas Supreme Court has held that no abandonment occurred in a situation similar to that which you describe. Specifically, in Christman v. City of Wichita, 209 F.2d 639 (10th Cir. 1954), it was held that the City of Wichita did not abandon land which it had condemned for airport purposes where it planted brome grass, alfalfa and lespedeza on a portion of the property, and authorized the operation of a "gunnery range" for Air Force officers on another tract.

Additionally, the use of a portion of airport property for recreational purposes, such as skeet shooting, is not necessarily inconsistent with the use for which the property was condemned. See Atchison, T. & S.F. Rly. Co. v. Hamilton, 130 Kan. 685 (1930); Dillon v. Railroad Co., 67 Kan. 687 (1903).

In accordance with the above-cited cases, it is our opinion that a city which condemns private property for the purpose of establishing an airport may lease a portion of the property for hay purposes and locate a police gun range on another part of the property. As long as the city maintains an airport upon the premises, other uses incidental to airport purposes are permissible, and such uses do not constitute an abandonment of the easement acquired in the eminent domain proceeding.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General