



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

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ATTORNEY GENERAL OPINION NO. 86- 171

The Honorable Don Montgomery
State Senator, Twenty-First District
1218 Main
Sabetha, Kansas 66534

Re: Cities and Municipalities--Cemeteries; Cities,
Townships and Corporations--Acquisition of Property

Synopsis: A township is given authority of condemnation for
the purpose of acquiring cemetery property.
However, condemnation is not a condition precedent
to purchasing additional land. Cited herein:
K.S.A. 12-1401; K.S.A. 80-101.

* * *

Dear Senator Montgomery:

As State Senator for the Twenty-First District, you have requested our opinion regarding the acquisition of property by a township for cemetery purposes. Specifically, you inquire whether a township which operates a cemetery may buy additional land, or whether the township must use condemnation proceedings. It is our opinion that condemnation proceedings are not a condition precedent to the acquisition of additional property.

A township is a body politic and corporate. The authority to make contracts which are necessary for the exercise of its corporate powers is conferred by K.S.A. 80-101. As a municipal corporation, a township enjoys the privilege to acquire property for corporate purposes. See generally,
10 McQuillin, Municipal Corporations, §§28.02, 28.12.

Property may be acquired in any recognized manner, which includes purchase or use of eminent domain. McQuillin, §28.15.

While some jurisdictions have required a township to condemn property prior to its acquisition, see, e.g., McQuillin, §28.15, at 36, it is our opinion that such is not the case in this jurisdiction. The authority to condemn property is derived from K.S.A. 12-1401, which states in relevant part:

"Any . . . township . . . may establish or acquire a cemetery for public use and may acquire land necessary for such purpose by condemnation. . . ." (Emphasis added.)

The use of permissive language does not indicate that condemnation is a prerequisite to the purchase of property. Rather, it appears that the statute grants authority in situations where exercising the power eminent domain is necessary to acquire property. Additionally, other statutes suggest authority to purchase, rather than condemn, property for cemetery purposes. See, e.g., K.S.A. 80-901; 12-1403; 12-1404; 12-1406.

In conclusion, it is our opinion that a township may purchase property for cemetery purposes without initiating condemnation proceedings.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm