

STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 86

Ruth E. Graham
Counsel for Tecumseh Township
714 Capitol Federal Building
700 Kansas Avenue
Topeka, Kansas 66603-3881

Re: Townships and Township Officers--General
Provisions--Lease of Township Property to
Nongovernmental Entity

Synopsis: A township may not lease township property pursuant
to K.S.A. 80-104 to a non-governmental entity if
such use is not a public one. Cited herein:
K.S.A. 80-101; 80-104; 80-105; 80-109.

* * *

Dear Ms. Graham:

As counsel for Tecumseh Township, you request our opinion
regarding the authority of a township to lease its property to
a non-governmental person or entity.

It is well settled that townships, being creatures of the
state, have only such powers as are conferred upon them by
statute. Township Board of Ash Creek Township v. Robb,
166 Kan. 138, 139 (1948); Paul v. Topeka Township Sewage
District No. 2, 199 Kan. 394, 399 (1967). K.S.A. 80-101
authorizes an organized township to "make all contracts that
may be necessary and convenient for the exercise of its
corporate powers." However, K.S.A. 80-104 speaks specifically
to the use of township property, requiring all usage to be
"for public purposes, such as meetings relating to

township business, political gatherings, township fairs, entertainments, . . . and such other meetings as may be authorized by the township board." (Emphasis added).

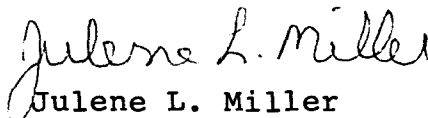
Courts have generally left the determination of what is a public, as opposed to a private, purpose to be decided on a case-by-case basis. McQuillin, Municipal Corporations, §10.31, (1979). This office has considered this language in connection with the authority to lease on two occasions. In Attorney General Opinion No. 73-243, VII Opinions of the Attorney General 1156, 1157 (1974), it was concluded that the lease of township property to a rural water district for its monthly meetings was a public purpose. This conclusion was based on the fact that the lessee was a public body which served residents of the township. By contrast, it was opined in Attorney General Opinion No. 77-50 that the lease of township property for industrial development, i.e., as sites for manufacturing, commercial or other businesses, is not a public use. See Attorney General Opinion No. 81-204; 87 C.J.S. Towns §94 (1954). Based on these prior opinions, we must conclude that the lease of a township building to a non-governmental entity is not essentially a public use and thus would fall beyond the authority granted in K.S.A. 80-104.

You ask further whether, in leasing township property for an authorized purpose, the township board must obtain consent from the electorate in an election. The township is required in certain circumstances, to conduct an election before purchasing real estate or erecting buildings, appropriating money or levying taxes therefore, or selling land owned by the township. K.S.A. 80-104; 80-105; 80-109. Leasing space in a township building does not normally fall within any of these categories and thus does not require an election.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General