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ATTORNEY GENERAL OPINION NO. 90- 26

Horace Edwards
Secretary of Transportation
Kansas Department of Transportation
Docking State Office Building
Topeka, Kansas 66612-1568

Re: Roads and Bridges; Roads--State
Highways--Acquisition of Title or Easement by
Secretary of Transportation, Eminent Domain;
Disposition of Property or Interest, Sale at Public
Auction, When; Appraisal; Advertisement of Sale;
Reappraisal, When; Conveyance, Record;
Disposition of Moneys; Succession of Secretary of
Transportation to Right, Title and Interest of
Highway Commission; Release of Easements

Synopsis: In legislation enacted as local economic
regulation, classifications that are rationally
related to a legitimate state interest do not
offend the Equal Protection Clause of the
Fourteenth Amendment. New section one of 1990
House Bill No. 2601 that distinguishes property
located within corporate city limits from rural
property does not offend the Equal Protection
Clause. Cited herein: U.S. Const., Amend. XIV

* * *

Dear Secretary Edwards:

As Secretary of the Kansas Department of Transportation
(KDOT) you inquire whether New Section 1 of 1990 House Bill
No. 2601 violates the Equal Protection Clause of the 14th

Amendment of the United States Constitution. The section authorizes the Secretary to acquire fee simple title to property within the corporate limits of a city when the property is necessary for highway purposes. The section provides that the property may be acquired by purchase, grant, dedication, trade or condemnation under the eminent domain powers of the State. The bill, however, authorizes the taking of fee simple to property located only within the corporate limits of a city and authorizes only a taking of an easement in rural areas. Thus the issue is whether the classification being created offends the equal protection guarantee of the 14th Amendment.

While the phrase "equal protection of the laws" is not subject to exact definition, it generally provides that all persons shall be treated alike under like circumstances, both in privileges conferred and liabilities imposed. 16 Am.Jur.2d Constitutional Law §§ 736 and 738; Lowe v. Kansas, 163 U.S. 81, 16 S.Ct. 1031, 41 L.Ed. 78 (1896). Economic or social legislation comes under review with the presumption of constitutionality; it is required merely that distinctions drawn in the legislation bear some rational relationship to a conceivable legitimate state interest or purpose. 16A Am.Jur.2d Constitutional Law § 750 (1979). Jacobs, Visconsi & Jacobs Co. v. City of Lawrence, Kansas, 715 F.Supp. 1000 (D.Kan. 1989); Cudahy Co. v. Ragnar Benson, Inc., 514 F.Supp. 1212 (D.Colo., 1981). In other words, the desirability of whatever social or economic objectives underlying a statute is purely a legislative matter. Equal protection of the laws does not mean that a statute cannot make any distinctions or classifications, but rather, that a statute cannot make any arbitrary distinctions or classifications that do not bear a rational relationship to the purpose or objective of the act.

As such, the question is whether classifying land located within the corporate limits of a city (urban land) differently than land located in rural areas (rural land) is reasonable in view of the purpose of the legislation in question. The analysis involves ascertaining both the nature of the classification and the governmental objective advanced by the classification, then comparing them. We must therefore examine the facts. 16A Am.Jur.2d Constitutional Law § 753 (1979); Crowe By and Through Crowe v. Wigglesworth, 623 F.Supp. 699 (D.C. 1985) (whether a statute or regulation violates the equal protection clause depends on the facts and circumstances).

You indicate that the policy decisions or the purpose of this classification is economic in nature. The 1990 H.B. 2601 authorizes the Secretary of Transportation to acquire by purchase, grant, dedication, trade or by the exercise of the right of eminent domain fee simple title "to an entire lot, block or tract of land for state highway purposes . . . [and] where uneconomic remnants of land would be left the original owner or where severance damage to a remainder make the acquisition of the entire lot, block or tract more economical to the state." (Emphasis added.) Clearly the language of New Section 1 identifies the legislation as local economic regulation. See Jacobs, Visconsi & Jacobs Co. v. Lawrence, Kansas, 715 F.Supp. 1000 (D.Kan. 1989) (local economic regulation is a legitimate state interest). In addition, you indicate that the state's interest or goal is the prudent use of taxpayer resources since 75% of the problem arises within city limits (urban land). You indicate that in enacting this remedial legislation, the legislature is utilizing a gradual approach, Cudahay Co. v. Ragnar Benson, Inc., 514 F.Supp. 1212, 1217 (1981) by prudently utilizing taxpayer resources spent to purchase city property to be used for highway purposes and thus remedying 75% of the problem. See Brown v. Wichita State University, 219 Kan. 2, appeal dismissed Bruce v. Wichita State University, 429 U.S. 806, 97 S.Ct. 41, 50 L.Ed.2d 67 (Kan. 1976) (equal protection clause does not require the state to choose between attacking every aspect of the problem or not attacking the problem at all).

Analyzing now the basis for the different classifications we find that the failure to extend the authority to take fee simple title of rural land is not wholly arbitrary because there are several bases upon which the legislature could reasonably have concluded that the classes of land warrant different treatment. One distinction lies in the nature of the land itself. Tracts of land in urban areas are divided and individually owned in small parcels, necessitating that a greater percentage of a tract of land (relative to the whole parcel) will be necessary for highway purposes. The greater percentage of the parcel taken will result in greater damage to the remainder. Whereas, in the rural areas the parcels of land are divided and individually owned in much larger tracts, thereby necessitating that a smaller percentage (relative to the entire parcel) of the land will be necessary for highway purposes. Logic dictates that the resulting damages to be compensated are less in rural areas. Additionally, the classes of land differ in the likelihood that the owner will be displaced by the taking of a greater percentage of his land

and therefore want to sell his land outright in urban areas. See generally 8 Am.Jur. Trials p. 66 (1965) (compensation is given for severance damage) and 6 A.L.R. 3d 317 (1966) (the "remnant" theory, allowing the acquisition by eminent domain of small odd-shaped fragments of land, is looked upon favorably by most courts that have dealt with it).

In view of the differences between urban land and rural land, we cannot say that the legislative judgment to authorize the taking of fee simple title to one while not authorizing the same in the other class is wholly arbitrary. In conclusion, it is our opinion that New Section One of 1990 H.B. 2601, that makes classifications having a reasonable or rational relationship to a legitimate state interest, does not offend the equal protection clause of the 14th Amendment.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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