



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

March 4, 1992

ATTORNEY GENERAL OPINION NO. 92- 32

Robert A. Beall  
City Attorney  
117 Cherokee  
P.O. Box 69  
Leavenworth, Kansas 66048

Re: Cities and Municipalities--Buildings, Structures  
and Grounds; Redevelopment of Central Business  
District Areas--Procedure to Establish District

Synopsis: The city of Leavenworth has pursuant to K.S.A.  
12-1770 et seq. properly established a  
redevelopment district. Resolutions passed by the  
Leavenworth board of county commissioners failed  
to meet statutory requirements and are of no legal  
effect and cannot prevent the establishment of such  
a district. Cited herein: K.S.A. 12-1770; 12-1771.

\* \* \*

Dear Mr. Beall:

As attorney for the city of Leavenworth, Kansas you inquire  
about the proper statutory procedures to be followed when  
establishing a redevelopment district pursuant to K.S.A.  
12-1770 et seq.

You inform us that the city, after a public hearing held  
January 8, 1991, passed a resolution making the findings  
required by K.S.A. 12-1771 and adopted an ordinance  
establishing a redevelopment district. You indicate that the  
district property was not subject to ad valorem taxes at any

time during the period that the public hearing was conducted or the resolutions and ordinances were passed.

On March 14, 1991, pursuant to K.S.A. 12-1772(f), the Leavenworth board of county commissioners adopted resolution 1991-8 finding the redevelopment plan adverse to the interests of the county. On November 26, 1991 the city adopted ordinance no. 7077 approving an amended redevelopment plan for the district. Thereafter, the Leavenworth county board of commissioners adopted resolution no. 1991-55 again finding the plan inimical to the interests of the county.

You inquire whether the county's initial resolution, adopted March 14, 1991, has any legal effect on the city's plans for a redevelopment district, and what, if any, effect the county's second resolution adopted after the city's second public hearing, has on the amended redevelopment plan.

K.S.A. 12-1771 sets forth the procedures a city must comply with in order to establish a redevelopment district, including the adoption of a resolution stating that the city is considering establishment of such a district, giving notice of a public hearing and describing the boundaries. K.S.A. 12-1771(e) provides that upon the conclusion of the hearing the governing body may adopt a resolution making the findings required and may establish the district by ordinance. The city appears to have complied with all the applicable provisions of the statute relating to the establishment of the district.

To answer your first question, what effect, if any, the county's resolution has on the city's redevelopment plan, we examine K.S.A. 12-1771(f) which states:

"(f) No privately owned property subject to ad valorem taxes shall be acquired and redeveloped under the provisions of K.S.A. 12-1770 et seq., and amendments thereto, if the board of county commissioners or the board of education levying taxes on such property determines by resolution adopted within 30 days following the conclusion of the hearing for the establishment of the redevelopment district required by subsection (d) that the proposed redevelopment district will have an adverse effect on such county or school district." (Emphasis added).

The fundamental rule of statutory construction is that the purpose and intent governs when that intent can be ascertained from the statute and that where the language of a statute is plain and unambiguous the court must give effect to the intention of the legislature as expressed. Johnson v. McArthur, 226 Kan. 128 (1979). The statute clearly states "no privately owned property subject to ad valorem taxes shall be acquired and redeveloped . . . if the board of county commissioners . . . determines by resolution adopted within 30 days . . . that the . . . district will have an adverse effect or such county. . . ."

The property was not privately owned and not subject to ad valorem taxes at any time during the proceedings establishing the district including the January 8, 1991 public hearing after which the resolution and ordinance were passed. The county was, therefore, without authority to intervene in the city's plans for a redevelopment district. Even in the event the county did have authority to adopt a resolution preventing redevelopment of the district, the statute clearly specifies the county must take action and adopt such a resolution within 30 days of the January 8, 1991 hearing. The county's resolution, adopted March 14, 1991, 65 days after the public hearing, does not comply with the statutory time period specified in K.S.A. 12-1771(f) and for this reason as well, the resolution would have no legal effect.

The county's second resolution, no. 1991-55, following the city's second public hearing to amend the plan, is likewise of no legal consequence since the county was without authority to act on the city's first plan. In our opinion the second public hearing is a continuation of the original proceedings to establish the redevelopment district and does not begin a new time period.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Rebecca E. Floyd  
Assistant Attorney General