



STATE OF KANSAS

*Office of the Attorney General*

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CURT T. SCHNEIDER  
Attorney General

July 1, 1975

ATTORNEY GENERAL OPINION NO. 75- 278

Mr. Charles D. Stough  
Attorney at Law  
Ninth and Kentucky  
Lawrence, Kansas 66044

Re: Cities--Streets and Alleys--Vacation

Synopsis: A 1954 order of the board of county commissioners excluding and vacating described land from a city pursuant to K.S.A. 12-504 operates to cancel the plat of said vacated and excluded land, and any new plat of said land must be approved by the city planning commission prior to filing.

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Dear Mr. Stough:

You advise that the City of Eudora was founded, and the original townsite was dedicated, in 1859. The property in question was part of the original townsite. On March 1, 1954, pursuant to a petition of the then owners of the land, the Douglas County Board of County Commissioners vacated and excluded all of the property from the boundaries of the city. The order vacated and excluded not only the property in question, but all streets and alleys within this 67 acre tract. In November, 1971, the City of Eudora annexed the property pursuant to K.S.A. 1970 Supp. 12-520.

The status of the property is thus in question. The City is concerned for the necessity of easements over the vacated streets and alleys, and the owner is interested to avoid the expense of subdividing and replatting the area.

The order of vacation was entered pursuant to K.S.A. 12-504 *et seq.* Title to streets, alleys and other public reservations then reverted as provided in K.S.A. 12-506:

Mr. Charles D. Stough  
Page Two  
July 1, 1975

"The streets, alleys or other public reservations which may be so vacated shall revert to the owners of the real estate immediately abutting thereon, according to the frontage of such real estate thereon: *Provided*, That all lands so reverting shall revert to the owners of abutting lands holding the same by title derived directly or indirectly from the owners of said land from which street or alley or public reservation was originally platted."

Rededication of former streets and alleys to public use would have to be accomplished as provided by law. In *Miller-Carey Drilling Co. v. Shaffer*, 144 Kan. 508, 61 P.2d 1320 (1936), the court stated thus:

"In this state a city may acquire title to real property for street purposes in any of four ways: (1) When the owner of the property makes and files a plat thereof, as provided by R. S. 12-401 *et seq.*, showing streets thereon; (2) it may open streets, using the power of eminent domain; (3) it may purchase the property needed for street purposes . . . .; or (4) it may acquire a street by prescription." 144 Kan. at 514.

The original plat is no longer valid, it appears. G.S. 1949 12-505, as it provided at the time of the 1954 vacation order, provided that upon the granting of such an order,

"thereupon the county clerk, shall certify a copy of such order to the register of deeds of his county, which order the register of deeds shall record in the deed records of the county . . . , and he shall also write on the margin of the recorded plat of such townsite or addition, the words 'canceled by order' or 'Canceled in part by order,' as the case may be, giving reference to the page and book where such order is recorded in his office."

Mr. Charles D. Stough  
Page Three  
July 1, 1975

Thus, presumably, the plat of the area in question is canceled, and has no force and effect. It is necessary, then, in our judgment, that subdivision of the area in question may be accomplished only by filing of a plat with the city planning commission or with the joint committee for subdivision regulation, if one has been formed, as required by K.S.A. 1974 Supp. 12-705b, which provides that the "register of deeds shall not file any plat as provided by law until such plat shall bear the endorsement hereinabove provided," which approval, of course, certifies that the plat conforms to the subdivision regulations of the commission.

The plat previously filed having been cancelled, pursuant to G.S. 1949 12-505, pursuant to the 1954 order of vacation, a new and further plat of the area must be filed, and approval of the planning commission is a prerequisite to such filing. There appears to be authority for the planning commission to recommend approval of the area as dedicated and platted in the original townsite, unless and until a plat is submitted for its review to determine conformity with subdivision regulations currently in force, and certainly, no plat of the area may not be filed without the approval of the planning commission.

I regret the delay in responding to your letter, but I hope this reply will nonetheless be helpful to the parties involved.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj