



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 23, 1975

ATTORNEY GENERAL OPINION NO. 75- 472

Mr. Jay Don Reynolds
Gray County Attorney
Gray County Courthouse
Cimarron, Kansas 67835

Re: Counties--Fair Property--Transfer

Synopsis: Property of the county, used for county fair purposes, may not be transferred to a private party for other than a public use, when such transfer is not supported by good and sufficient consideration. Title to such property is vested by K.S.A. 2-133, in the board of county commissioners, and approval by the board of directors appointed pursuant to that statute is not a lawful prerequisite for transfer of such property by the board of county commissioners. Consumption of alcoholic beverages on property of the county is prohibited, including such property occupied by a private lessee.

* * *

Dear Mr. Reynolds:

You inquire concerning a proposed conveyance of certain property by the Board of County Commissioners of Gray County.

You advise that in 1955, the county received title to a tract of land from the Gray County Agricultural Association, the deed reciting a consideration of one dollar and "the consideration of operating the Gray County Free Fair." There are no other reservations or restrictions on the use of the land contained in the deed. Included in this tract are three or four acres which have not been used in any way in the operation of the free fair for the past 20 years. Veterans organizations of the county have approached

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the board, seeking the use of a site on this land for construction of a Veterans Memorial Building. The board has agreed to make available a building site on the unoccupied unused tract included in the transfer from the Gray County Agricultural Association if there are no legal obstacles to doing so.

As you point out, K.S.A. 19-211 sets forth procedures to be followed in the sale or other disposition of county property which exceeds \$5,000 in value. It is not their intention to make available any property which is valued at more than \$5,000. Further, it is pointed out that the property in question is governed by K.S.A. 2-133, which provides thus in pertinent part:

"All land and buildings acquired by virtue of the provisions . . . of this act shall be held in the name of the county and under the control of the board of county commissioners: *Provided*, The board . . . shall at their first meeting after the purchase or acceptance of a fairground as provided in section 8 [2-132] appoint a board of directors Said board . . . acting for itself or through an executive board shall have the management and control of the business of the fair association and its property subject to the approval of the board of county commissioners"

You inquire, first, whether the commissioners are authorized to give to the Memorial Building committee a portion of the land valued at less than \$5,000.

The county is empowered to "sell and convey any real or personal estate owned by the county" and may "make such order respecting the same as may be deemed conducive to the interest of the inhabitants." Public property of the county may not be diverted from its public use to serve other than public purposes. A gift of public property to a private individual, or a private, voluntary association of persons, for the purposes of the grantee without a good and sufficient consideration may result in a transfer of public property for other than public purposes. I cannot but conclude that a gift of the property in question is not authorized by K.S.A. 19-211. However, a conveyance of the property for good and sufficient consideration would be within the authority of the board.

Secondly, you ask whether a resolution by the Gray County Fair Board indicating their approval of the transfer of the property

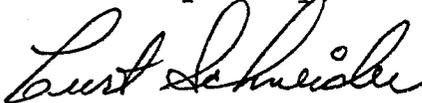
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from Gray County to the Memorial Building Committee is required. Under K.S.A. 2-133, property acquired under the act shall be held "in the name of the county and under the control of the board of county commissioners." The fair board "shall have the management and control of the business of the association and its property subject to the approval of the board of county commissioners." The fair board acts, in effect, as the delegate of the board of county commissioners, which is vested with title to the property and control thereof. Acts of the board are themselves subject to approval by the board of county commissioners. Under this statute, I must conclude that the board of county commissioners need not seek approval from the fair board as a condition precedent to a lawful conveyance of the real property in question.

You inquire whether, if the tract were leased to the Memorial Building Committee for a period of 99 years, the prohibition of K.S.A. 41-719 would prevent legal consumption of alcoholic beverages on the leased property. I enclose a copy of Opinion No. 75-242, concluding that property in which fee title is vested in the governing body, notwithstanding it is occupied by a private lessee, is nonetheless subject to the prohibition against consumption in K.S.A. 41-719.

Lastly, you inquire whether the board of county commissioners should cause the tract to be appraised by independent appraisers prior to any transfer of the property. So long as the value of the property does not exceed \$5,000, no such appraisal is required. If, of course, there exists some question as to the value, and it is deemed possible that it could not unreasonably be appraised as of that value, it may be desirable to have such an estimate. There is no statutory requirement, however, that it be made.

Yours very truly



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj