



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

July 21, 1977

ATTORNEY GENERAL OPINION NO. 77- 242

Harold Prell
Marshall County Clerk
Marshall County Courthouse
Marysville, Kansas 66508

RE: Taxation - Abandoned Railroad Right-Of-Way -
Reversion - Adverse Possession. K.S.A. 12-506,
13-443, 60-503, and 79-405,-406,-407

SYNOPSIS: Railroads, highways, etc., for which strips of land are acquired, regardless of the instrument of acquisition, secure a surface easement only, and upon abandonment title to the land reverts to the original landowner and his successors. Unless the adjoining landowners, on either side of the abandoned easement can agree on division, or get a court ruling, the County Clerk must follow the laws for platting where land is owned by two or more in severalty, and divide the land in light of the title records, present Kansas laws, and Court decisions interpreting those laws. But it is for a Court to decide any rights under a claim of adverse possession.

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Dear Mr. Prell:

You say a landowner deeded a strip of land for a railroad right-of-way in 1895. Thereafter, the state took another easement for Highway No. 13 south of the railroad. Some years later the Corps of Engineers condemned the railroad for Tuttle Creek Reservoir. The railroad has now been abandoned and the Corps has requested the right-of-way be put on the tax rolls.

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You say you have a problem in that the present owner to the north has cleared the bed and is now farming all the way to the highway. The present owner to the south, who has farmed only to the highway, which still exists, claims half of the railroad bed. You ask who is right and how you should proceed. You quote 65 Am. Jur. 2d 394, Sec. 85 to the effect that railroads, highways, etc., for which strips of land are acquired regardless of the instrument of acquisition, secure a surface easement only, and upon abandonment title to the land reverts to the original landowner and his successors.

Kansas has the same rule. Abercrombie v. Simmons, 71 Kan. 538, 71 Kan. 538, 1 L.R.A. NS., 806, 114 Am. St. Rep. 509 (1905); Pratt v. Griese, 196 Kan. 182, 409 P.2d 777 (1966); Harvest Queen Mill & Elevator Co. v. Sanders, 189 Kan. 536, 370 P.2d 419, 6 A.L.R. 3d 962 (1962).

You say that the original landowner owned both sides of the railroad. When he conveyed, he split the land, conveying either "north" or "south of the railroad right-of-way".

The ownership of subservient estates passed even though no express provision to that effect is contained in the deed. Gotheridge v. Unified School Dist., 212 Kan. 798, 803, 512 P.2d 478, (1973). Thus, a conveyance of a platted lot carries title to the middle of the street, or to the middle of the alley in the rear, in case the easement for the street or alley is vacated. K.S.A. 12-506, 13-443. Challiss v. Depot and Rld. Co., 45 Kan. 398, 404 25 P.894 (1891); Luttgen v. Ergenbright, 161 Kan. 183, 166 P.2d 712 (1946). These reversion rights arise as a matter of public policy declared by the legislature and the court.

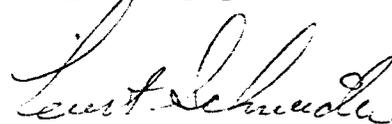
It would seem that under these statutes and decisions, that the original owner here, in deeding "north" and "south of" the railroad, split his land down the middle of the railroad-right-of-way for reversion purposes, although a close study of the actual deeds must be made.

You further state that the present landowner on the north has cleared the bed of the railroad and has been tilling it. You do not say for how long. The reversion of rights upon abandonment of a right-of-way may be lost by adverse possession. Truck-Trailer Supply Co. v. Farmer, 181 Kan. 396, 311 P.2d 1004 (1957). Under K.S.A. 60-503 adverse possession must run for fifteen years, but we would not advise that you enter this question, because this is an issue for a court to decide.

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It would be our opinion you should notify the two adjoining land owners of your intention to follow K.S.A. 79-405, -406 and -407 and plat the division line between them unless they can agree upon it or obtain a court determination. If they fail, then you must proceed as best you can in the light of the title record, the Kansas statutes, and the above cited Kansas Supreme Court cases.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw