



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 16, 1978

ATTORNEY GENERAL OPINION NO. 78-18

Mr. M. Moran Tomson
Stanton County Attorney
Post Office Box 310
Johnson, Kansas 67855

Re: Counties--Property--Powers

Synopsis: K.S.A. 1977 Supp. 19-211 does not authorize the board of county commissioners to convey any right, title or interest to any real property which is not vested in the county by the deed in the first instance. The power of the board to dispose of county property does not empower the board to circumvent any restriction or condition upon the use of property conveyed to it for the public use and benefit.

* * *

Dear Mr. Tomson:

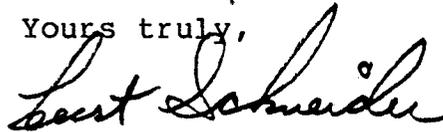
You enclose a copy of a deed executed March 30, 1930, whereby Elizabeth M. Watkins did "dedicate to the public use and benefit forever" certain property described therein, "to be enjoyed and used as a public highway and for no other purpose whatever." You advise that the board of county commissioners is interested in either leasing or selling the described property, and point out that under K.S.A. 1977 Supp. 19-211, the board of county commissioners is authorized to sell and dispose of county property.

You request my opinion whether the board of county commissioners of Stanton County has the authority to circumvent the restrictive language in the deed and to sell the property outright at this time or, in the alternative, to lease the unused portion of the property on a long-term basis. Neither the statutory authority of the board under K.S.A. 1977 Supp. 19-211 to dispose of county

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property or its authority under K.S.A. 19-212 concerning the care and management of county property empowers the board to convey any right, title and interest to property which the county does not have in the first instance. The deed is explicit in the restriction imposed upon the use of the property conveyed thereby. The board may not convey any interest in the property whatever, in my judgment, unless and until it obtains a judicial determination of the precise nature of the interest conveyed to the county by the 1930 deed, e.g., whether it holds merely an easement, fee title subject to a condition, or some other interest.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj