

DATE: October 23, 1979

TO: File Copy of Attorney General Opinion
No. 79-53

FROM: Rodney Bieker, ^{egb}Assistant Attorney General

RE: Attorney General Opinion No. 79-53

OFFICE
2ND FLOOR

In conjunction with this opinion, see
K.S.A. 75-2130 et seq. relating to the
granting of public utility easements by
state agencies having control over state
lands.

April 11, 1979

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3731
ANTITRUST: 296-5299

ROBERT T. STEPHAN
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION NO. 79- 53

Mr. Robert A. Gottschalk, Secretary
Board of State Fair Managers
20th & Poplar
Hutchinson, Kansas 67501

Re: Agriculture--State Fair--Contracts for Use of
State Fairgrounds by City of Hutchinson

Synopsis: Pursuant to K.S.A. 2-219, the Board of State
Fair Managers may enter into a contractual agree-
ment with the City of Hutchinson, Kansas, whereby
said city is granted a license to construct,
maintain, and use a surfaced roadway across the
fairground property.

* * *

Dear Mr. Gottschalk:

You request our opinion as to whether the Board of State Fair
Managers has authority to enter into a contractual agreement
with the City of Hutchinson, Kansas, for the purpose of con-
structing a surfaced road across fairground property. Further,
you indicate that construction of such a road would benefit
both the operation of the State Fair and the traffic flow of
the City of Hutchinson.

Analysis of your inquiry begins with the provisions of K.S.A.
2-202, which, in relevant part, provides:

"The tract of land conveyed by the county of
Reno to the state of Kansas for fair pur-
poses . . . shall be held by the state of
Kansas as a state fairgrounds, and for other

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authorized uses. The board of state fair managers may direct, regulate, lease and control the use of said fairgrounds . . . in the conducting and operating of a state fair; and when use of same is not deemed necessary for use for fair purposes, the board of state fair managers may enter into a contract, lease or agreement permitting the use of all or a portion of such fairgrounds . . . for such uses and on such terms and conditions as may be agreed upon" (Emphasis added.)

In addition, K.S.A. 2-219 provides:

"When the use of the fairgrounds is not deemed necessary for use for fair purposes, the board of fair managers may enter into a contract, lease or agreement with the city of Hutchinson, Kansas, permitting the use of all or a portion of such fairgrounds, or building located thereon for such uses and on such terms and conditions as may be agreed upon: Provided, That such contract lease or agreement shall be in writing." (Emphasis added.)

It is apparent that the above-quoted statutes grant to the Board of State Fair Managers the right to direct, regulate, lease, control and permit the use of the tract of land comprising the state fairgrounds. Therefore, the determination of your inquiry depends in part on whether construction of a surfaced road is a use permitted by these statutory provisions. Such determination necessarily depends upon the meaning of "use" as employed in these statutes.

In Esfeld Trucking, Inc. v. Metropolitan Insurance Co., 193 Kan. 7 (1964), the Court states:

"A detailed explanation of the definition of the word use appears in 91 C.J.S., Use, pp. 513 et seq., and includes a statement to the effect that as a noun use has been held to be synonymous with benefit and employment, and practically synonymous with enjoyment (p. 517), and as a verb, it has

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a well-understood meaning and a legal significance, having been variously defined as meaning to employ, to employ for any purpose, to employ for the attainment of some purpose or end, to avail one's self of, to convert to one's service, or to put to one's use or benefit, and the infinitive to use has also been defined as to hold, occupy, enjoy, or take the benefit of. (pp. 518-519.)" Id. at 10, 11. [Emphasis by court.]

Another paragraph of C.J.S. referenced in the foregoing quote is particularly pertinent to your inquiry and reads as follows:

"As a general rule, the 'use' of a thing does not mean the thing itself, but means that the user is to enjoy, hold, occupy, or have in some manner the benefit thereof, and in this 'use' is the right to enjoy, hold, or occupy, and have the fruits. Thus, if the thing to be used is in the form or shape of real estate, the use thereof is its occupancy or cultivation, etc. . . ." [Emphasis added, footnotes omitted.] 91 C.J.S. Use, p. 515.

It is apparent from the foregoing that, within the context of K.S.A. 2-202, an agreement permitting the use of the fairgrounds is tantamount to granting a license. The term "license," as it applies to real property, is a legal term of art and has acquired a well-settled meaning in the law. As stated in Black's Law Dictionary 1068 [4th ed. (1957)], the word "license," as it relates to real property law, means: "Permission or authority to do particular act or series of acts on land of another without possessing any estate or interest therein."

Given the above definitions of the terms "use" and "license," it is our opinion that the legislature intended that the Board of State Fair Managers have the power and authority to grant a license or licenses in regard to the state fairgrounds. That is, the legislature gave said Board the power to permit persons, other than the Board, "to enjoy, hold, occupy or have in some manner the benefit thereof." It did not, however, give the Board power to convey the land or any interest therein.

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In our judgment, the latter requires a specific statutory grant of authority, such as that found in K.S.A. 2-215, empowering the Board to grant an easement to the City of Hutchinson.

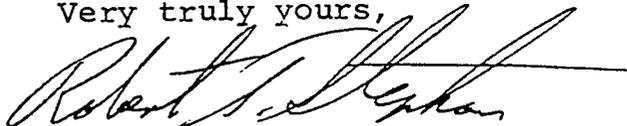
In Stanolind Pipe Line Co. v. Ellis, 142 Kan. 102 (1935), the Court cites 9 R.C.L. 744 and 2 Tiffany on Real Property (2d Ed.) 1202, in distinguishing a license from an easement:

"The difference between an easement and a license is thus defined in 9 R.C.L. 744:

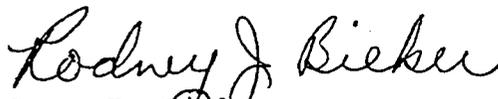
"The difference between an easement and a license is that the former implies an interest in land, while the latter does not. An easement must be created by deed or prescription, while a license may be by parol. The former is a permanent interest in the realty, while the latter is a personal privilege to do some act or series of acts upon the land of another without possessing any estate therein, and is generally revocable at the will of the owner of the land in which it is to be enjoyed, by the death of the licensor, or by his conveyance of the lands to another, or by whatever would deprive him of doing the acts in question or giving permission to others to do them."
Id. at 105.

In our judgment, K.S.A. 2-202 and 2-219 authorize the Board to permit the use and occupation of the state fairgrounds but do not authorize conveying an easement or other interest in such land. Thus, we are of the opinion that, pursuant to K.S.A. 2-219, the Board of State Fair Managers may enter into a contractual agreement with the City of Hutchinson, Kansas, whereby said Board grants a license to said city to construct, maintain and use a surfaced road across the state fairgrounds. Such agreement, however, should clearly and unequivocally state that the Board is granting only a license, not an easement or other interest in the land.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General