



STATE OF KANSAS

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ATTORNEY GENERAL

October 25, 1979

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ATTORNEY GENERAL OPINION NO. 79- 245

Stephen W. Boyda
Marshall County Attorney
1312 Broadway
P. O. Box 207
Marysville, Kansas 66508

Re: Counties and County Officers--General Provisions--
Sale of County Property

Synopsis: Counties have authority to sell county property pursuant to statutory home rule powers, as provided in K.S.A. 19-101 et seq. While the power to sell is subject to the procedures established by K.S.A. 1978 Supp. 19-211 if the property for sale is valued at \$25,000 or more, a sale which does not dispose of all of the county's right and title to the property is not included under this provision.

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Dear Mr. Boyda:

You have requested our opinion concerning the sale of the Marshall County Courthouse to the Marshall County Historical Society. According to your letter, the county would like to sell this property and retain a reversionary interest if the Historical Society discontinued using the building, i.e., the interest conveyed to the Historical Society would be a fee simple determinable. You inquire whether the retention of an interest by the county removes the sale from the provisions of K.S.A. 1978 Supp. 19-211, which sets up certain requirements for the sale of buildings valued at \$25,000 or more.

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Counties are authorized to sell property owned by the county pursuant to K.S.A. 19-101, which provides in pertinent part:

"That each organized county within this state shall be a body corporate and politic; and as such shall be empowered for the following purposes: . . . to sell and convey any real or personal estate owned by the county, and make such order respecting the same as may be deemed conducive to the interest of the inhabitants"

However, such authority is "subject to all acts of the legislature which apply uniformly to all counties." K.S.A. 1978 Supp. 19-101a (as amended by L. 1979, ch. 52, §9). One such act is K.S.A. 1978 Supp. 19-211, which provides as follows:

"Except for any property belonging to a county law enforcement department, no property belonging to any county the value of which is more than twenty-five thousand dollars (\$25,000) but is not more than one hundred thousand dollars (\$100,000), shall be sold or disposed of by any board of county commissioners without a unanimous vote of such commissioners and public notice of such sale or disposition containing the time, place and conditions thereof having been given at least once each week for three (3) consecutive weeks prior thereto in the official newspaper of the county. Such sales shall be made to the highest bidder except that the board of county commissioners shall have the right to reject any or all bids. No property, the value of which exceeds one hundred thousand dollars (\$100,000), shall be sold or disposed of by any board of county commissioners, unless the proposition of sale or disposal of such property shall first be submitted to a vote of the electors of the county at a question submitted election called therefor, which election shall be called, noticed and held in the manner provided by K.S.A. 1978 Supp. 10-120 of the general bond law, as the same can be made applicable, or at a general election.

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If a majority of the votes cast at any such election shall authorize any sale, such sale shall be made upon the notice hereinbefore prescribed by publication, to the highest bidder, except that the board of county commissioners shall have the right to reject any or all bids. When property of the county having a value of not more than one hundred thousand dollars (\$100,000) is sold, the board of county commissioners shall cause to be published as a part of the statement required by K.S.A. 19-228, a detailed account of such sale which shall describe the property sold, to whom sold, and the sale price."

You advise that the courthouse in question is currently valued below \$25,000. Therefore, based upon your statement as to the building's value, it is our opinion that the power of the county to sell the property, pursuant to its home rule powers, is not subject to the above requirements contained in K.S.A. 1978 Supp. 19-211. However, if the value of the property were to increase to \$25,000 or more, the provisions of that statute would have to be followed, including a public vote if the value exceeded \$100,000.

It should be noted, though, there appears to be authority for the position that the retention by the county of an interest in the property takes the sale out of the scope of K.S.A. 1978 Supp. 19-211 altogether. Such proposition is based on the Kansas Supreme Court case of State, ex rel. v. City of Garnett, 180 Kan. 405 (1956). In that case, the Court considered the validity of a contract whereby Anderson County granted an easement to the City of Garnett on certain county property for the purpose of widening the streets around the courthouse square. The state, on relation of the Anderson County Attorney, challenged such action on the grounds that the easement amounted to a "sale or disposal of" county property of the kind precluded by K.S.A. 19-211. The Court rejected this argument, holding:

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"This statute must be interpreted as contemplating such a sale or disposal of the property as to completely divest the county of all its right and title to the property." Id. at 407. (Emphasis added.)

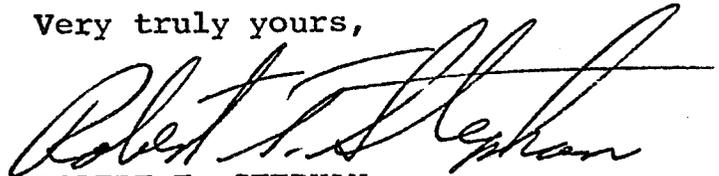
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The same result was reached in a recent opinion from this office concerning the validity of the long-term lease of a county hospital to the University of Kansas for use as a medical school. See Attorney General Opinion No. 79-66.

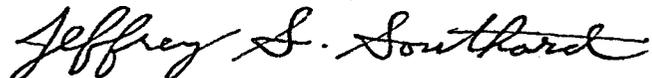
The situation herein is similar, for the county's deed to the historical society will provide for the reversion of the property back to the county in the event that the society discontinues use of the building. The interest being conveyed is a fee simple determinable, and does not divest the county of all its right and title to the property.

Therefore, it is our conclusion that counties have authority to sell county property pursuant to statutory home rule powers, as provided in K.S.A. 19-101 et seq. While the power to sell is subject to the procedures established by K.S.A. 1978 Supp. 19-211 if the property for sale is valued at \$25,000 or more, a sale which does not dispose of all of the county's right and title to the property is not subject to this provision. Accordingly, where a reversionary interest in the courthouse remains with the county, it is immaterial whether the county deeds the courthouse to the historical society before or after the increase in value resulting from the renovation work that is done.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk

Enclosure: Attorney General Opinion No. 79-66