



STATE OF KANSAS

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February 3, 1981

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ATTORNEY GENERAL OPINION NO. 81-29

Mr. Calvin K. Williams
Osage County Attorney
County Courthouse, 3rd Floor
Lyndon, Kansas 66451

Re: Personal and Real Property--Townsites, Lots and
Platted Lands--Effect of Vacating Certain Plats

Synopsis: Pursuant to the provisions of K.S.A. 58-2614, a
board of county commissioners must, upon vacating
a subdivision plat, order that the land "be listed
for taxation and for other purposes as though it
had never been platted." Cited herein: K.S.A.
58-2613 and 58-2614.

* * *

Dear Mr. Williams:

You request our interpretation of K.S.A. 58-2614. You state that the owners of a certain tract of real estate, which real estate has been both platted and replatted, have petitioned the Osage County Board of County Commissioners to vacate the replat (Plat #2) and reinstate the original plat (Plat #1). Your question is whether, under the above-cited statute, the vacation of Plat #2 will "reinstate" Plat #1.

K.S.A. 58-2613 provides, in part, as follows:

"Whenever the owner or owners of any tract of land . . . which has been platted as an addition or subdivision . . . and which lies wholly outside the limits of any incorporated city . . .

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desire to have the same vacated, they shall file a petition with the board of county commissioners of the county in which said land is located, describing the plat . . . proposed to be vacated and praying for the vacation of the plat Upon the filing of said petition, the board of county commissioners shall fix a time for the hearing of said petition and shall give notice of said hearing by publication once each week for four consecutive weeks in the official county paper. If such land be located within an area which is subject to the subdivision regulations of any city, notice of such hearing shall also be given to the governing body and planning commission of such city."

K.S.A. 58-2614 provides, in part, that:

"Upon the hearing, if the board of county commissioners shall be satisfied that due and regular notices have been given as required by this act, that the public will suffer no loss or inconvenience by such vacation and that no private rights will be injured or endangered thereby, it shall order that such vacation be made and if the vacation is of a plat that such land shall thereafter be listed for taxation and for other purposes as though it had never been platted: Provided, that no such vacation shall be granted if the governing body of any city having subdivision regulations applicable to the area in which said property is located, shall protest against such vacation. The order of the board shall be entered on the records of proceedings of the board, and a certified copy thereof recorded in the office of the register of deeds of the county. Such order, if approving a vacation of a plat, street, alley, public easement or reservation shall protect and provide for the property rights of public utilities, rights-of-way, and easements for public service facilities then in existence and use. The costs of the proceedings, including publication and recording costs, shall be paid by the party or parties presenting the petition." (Emphasis added.)

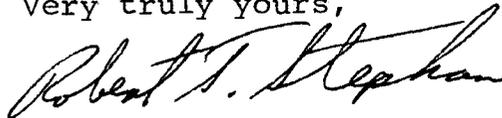
In our opinion, the provisions of the last-quoted statute are clear and unambiguous. If a landowner's petition to vacate a plat is granted, the order of the board of county commissioners

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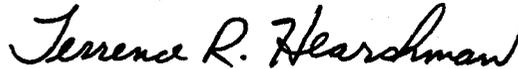
must provide that the land "be listed for taxation and for other purposes as though it had never been platted." The land reverts to unplatted property, and the board of county commissioners is not authorized to "reinstate" a previously-filed plat. Therefore, with regard to the fact situation which you describe, upon the vacation of Plat #2, the property will revert to unplatted land, and the Osage County Board of County Commissioners may not order otherwise.

Your letter suggests several grounds upon which Plat #2 may be invalid. See Sullivan v. Davis, 29 Kan. 28 (1882); Phillips v. Interurban Railway Co., 89 Kan. 835 (1913). The landowners may, therefore, be able to "reinstate" Plat #1 through the institution of a declaratory judgment action to determine the validity of Plat #2. However, since there are factual issues (relative to the validity of Plat #2) which would have to be determined by a court, we express no opinion as to the efficacy of such an action.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm