



STATE OF KANSAS

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April 7, 1981

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ATTORNEY GENERAL OPINION NO. 81-78

Mr. David E. Retter
Peoples Savings and Loan Bldg., Suite A
P. O. Box 676
Concordia, Kansas 66901

Re: Cities and Municipalities -- Buildings, Structures
and Grounds -- Unsafe and Immediately Hazardous
Structures

Synopsis: K.S.A. 12-1750 et seq. do not authorize cities
to repair unsafe structures except where such
structures are immediate hazards. Cited herein:
K.S.A. 12-1750, 12-1752, 12-1753, 12-1755, 12-1756

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Dear Mr. Retter:

As counsel for the City Council of the City of Tipton, Kansas you request our opinion regarding the power of the city to repair unsafe structures pursuant to K.S.A. 12-1750 et seq. You state that apparent inconsistencies within these statutes present the question of whether a city has authority to repair a dangerous or unsafe structure rather than razing or removing the same.

K.S.A. 12-1751 et seq., are the statutes which generally grant cities power to act in this area. K.S.A. 12-1751 states thus:

"The governing body of any city shall have power to cause the repair or removal of, or to remove any structure located within the city, which may have become unsafe or dangerous."
(Emphasis added.)

This general authority allows the city to either cause repair or removal, or to actually carry out removal. This critical difference is consistently reflected by language in the remain-

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ing provisions of these statutes. K.S.A. 12-1753 grants cities the power to make a resolution directing the owner to repair or remove the structure in question. Normally, the city's authority to take action beyond this resolution is limited to the two situations described in K.S.A. 12-1755 and 12-1756. The former section grants the city power to take direct action only in the event that the owner has failed to commence repair or removal as required by the notice and resolution. That section states in pertinent part thus:

"If the owner of any structure has failed to commence the repair or removal of such structure within the time stated in the resolution or has failed to diligently prosecute the same thereafter, the city may proceed to raze and remove such structure, make the premises safe and secure, or let the same to contract"
(Emphasis added.)

Notably absent is any reference to the repair of the dangerous structure. Thus, in the usual instances when resolution and notice to the owner ordering repair or removal of a structure are utilized, the city may proceed to remove, but not repair, the dangerous structure from the premises after the owner has failed to act.

The only time the city has power to take action to repair is in the event that the structure creates an immediate hazard. K.S.A. 12-1756 governs this situation as follows:

"When in the opinion of the enforcing officer, any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, such officer may erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay and such action may, under such circumstances, be taken without prior notice to or hearing of the owners, agents, lienholders and occupants. The cost of any such action shall be assessed against the property and paid in the manner provided by K.S.A. 12-1755." (Emphasis added.)

The ability of a city to repair in this situation is granted only in the event that immediate action is required to "protect the public." Elsewhere in this act, the powers of the city are limited to removal or the causing of others to repair or remove their own structures.

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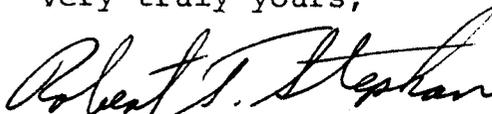
You suggest that the power of cities to repair unsafe, but not immediately hazardous, structures is supported by language in K.S.A. 12-1752, the statute providing notice and hearing requirements. The statute states in pertinent part thus:

"Whenever the enforcing officer shall file with the governing body of the city, a statement in writing that any structure, describing the same and where located, is unsafe or dangerous, said governing body shall by resolution fix a time and place at which the owner, his or her agent, and lienholders of record and any occupant of such structure may appear and show cause why such structure should not be condemned and ordered repaired or demolished." (Emphasis added.)

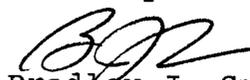
In our opinion this language does not expand any power of the city to repair. The statute does not grant power to the city, it merely provides some designated persons with a forum to show why the structure should not be ordered repaired or demolished. We note that even if this language worked to grant power, such power, by its terms, would be only to order structures repaired or demolished. In our opinion the act is not inconsistent or confusing so as to require application of the traditional rules of statutory construction. Simply stated, private property may be ordered removed or repaired when such property is determined to be dangerous. Such may only take place following notice and hearing. Failure of the owner of dangerous property to comply with an order of the city to repair or remove, may result in removal of the structure by the city. On the other hand, where the structure is deemed to be an immediate hazard, notice and hearing procedures may be dispensed with, and the city is authorized to either remove or repair the hazardous structure.

Therefore, it is our opinion that K.S.A. 12-1750 et seq. do not authorize cities to repair unsafe structures unless said structures constitute immediate hazards.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle