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ATTORNEY GENERAL OPINION NO. 82- 249

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Re: Corporations--Urban Renewal Law--Acquisition of Real Property For Urban Renewal Project, Limitation

Synopsis: The phrase "blighted area of open land," as used in K.S.A. 17-4747(d), refers to a land area which is substantially in excess of that which is contained in a vacant lot or lots in an urban area. Cited herein: K.S.A. 17-4742, 17-4743, 17-4747, 17-4760.

* * *

Dear Mr. Chinn:

You request our interpretation of the Urban Renewal Law, K.S.A. 17-4742 et seq. Specifically, you inquire as to the meaning of the phrase "blighted area of open land" in K.S.A. 17-4747(d) and K.S.A. 17-4760(i).

K.S.A. 17-4747 provides for the acquisition of real property for urban renewal projects, and the pertinent portion of subsection (d) restricts said acquisition as follows:

> "[I]f the urban renewal area or a portion thereof consists of a blighted area of open land which is to be acquired by the municipality

> for slum clearance and redevelopment, such blighted area shall not be so acquired unless (1) it is to be redeveloped for predominantly residential uses, and (2) the local governing body shall determine that a shortage of housing of sound standards and design which is decent, safe and sanitary exists in the municipality; that the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas (including other portions of the urban renewal area); that the conditions of blight in the area and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime and constitute a menace to the public health, safety, morals or welfare; and that the redevelopment of the area for predominantly residential uses is an integral part of and essential to the program of the municipality for the elimination of slum and blighted areas." (Emphasis added.)

K.S.A. 17-4760(i) defines the term "blighted area" as follows:

> "Blighted area" shall mean an area (other than a slum area) which by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivisions or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use: Provided, That if such blighted area consists of open land the conditions contained in the proviso in K.S.A. 17-4747(d) shall apply." (Emphasis added.)

The precise question which you raise was briefed and argued in Urban Renewal Agency v. Decker, 197 Kan. 157 (1966). Judge Claflin of the Wyandotte County District Court had held, in essence, that the restriction relating to "open land" in subsection (d) of K.S.A. 17-4747 applied to an unimproved, vacant lot which the Urban Renewal Agency of Kansas City, Kansas, had sought to acquire in condemnation proceedings. (See Record on Appeal, p. 10, Finding No. 5.) On appeal, the Kansas Supreme Court noted the trial court's finding (197 Kan. at 158), but held that such a question could be litigated only in a separate, independent action for an injunction. Therefore, the court ordered that the condemnation proceedings be re-instated as to the vacant lot owned by the appellees, and did not find it necessary to rule upon the question of whether an unimproved, vacant lot constituted a "blighted area of open land" under subsection (d) of K.S.A. 17-4747.

Although the Supreme Court did not rule as to whether a vacant lot or lots constituted a "blighted area of open land," we find the appellant's position on this point to be persuasive, and believe that the Court would adopt it if the question were properly before the Court on appeal. The appellant's arguments on this point were as follows:

> "An examination of K.S.A. 17-4743 reveals that the Kansas Legislature established the Urban Renewal Law to deal with the problem of slum and blighted areas. Further the Missouri Supreme Court in State v. Land Clearance for Redevelopment Authority of Kansas City, Missouri, 364 Mo. 974, 270 S.W.2d 44, construing a similar provision of the Missouri Urban Renewal Law states (emphasis are the Court's):
>
> "'The purpose of the Act, as declared by the Legislature is the clearance and redevelopment of blighted and insanitary areas that constitute a menace to public health, safety, morals and welfare. To insure effective redevelopment of such an area, it probably would be necessary in certain instances to acquire buildings or vacant land which, but for being within the area, would not be blighted or insanitary. To deny authority the power to acquire such buildings or vacant land could and in many instances would defeat the very purpose of the legislation, to wit: the clearance and redevelopment of blighted and insanitary areas, as distinguished from individual properties.'"

> "The court should not restrict appellants to a piecemeal approach to urban blight. Berman v. Parker, 348 U.S. 26, 75 S.Ct. 98; Schenck v. Pittsburgh, 364 Pa. 31, 70 A.2d 612." Appellant's Brief, supra at p. 11.

In accordance with the authorities cited in the above-quoted excerpt from the Appellant's Brief in the Decker case, it is our opinion that the phrase "blighted area of open land," as used in K.S.A. 17-4747(d), refers to a land area which is substantially in excess of that which is contained in a vacant lot or lots in an urban area. In our judgment, any other construction of the phrase would unduly restrict cities in applying the Urban Renewal Law, and would result in the "piecemeal approach" which was found to be unreasonable in the above-cited cases.

Very truly yours,

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