



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 60

F. L. "Mac" McGinley
Sherman County Attorney
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Goodland, Kansas 67735-0919

Re: Counties and County Officers -- General Provi-
sions -- Authority to Purchase Real Property

Counties and County Officers -- Miscellaneous
Provisions -- Disposal of Refuse; Acquisition
of Lands

Synopsis: K.S.A. 19-2658 authorizes the board of county
commissioners to exchange county-owned property
for a parcel of real property which would be
utilized as a county landfill. Cited herein:
K.S.A. 19-101, 19-2658.

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Dear Mr. McGinley:

You have requested the opinion of this office regarding whether the Board of County Commissioners of Sherman County is authorized to purchase a quarter section of real property and exchange same for a quarter section of real property for use as a landfill. The present county landfill is nearing capacity and the board of county commissioners desires to obtain a quarter section of land contiguous to the present landfill. However, as you explain, the owner of the subject contiguous quarter section is not agreeable to selling the property but would agree to an exchange of the contiguous quarter section for a similar quarter section in Sherman County.

As we interpret your opinion request, two real property transactions are contemplated by the Board of County Commissioners of Sherman County. First, the board would

purchase a quarter section of real property and, second, exchange such quarter section for the quarter section contiguous to the Sherman County landfill.

K.S.A. 19-101 Second authorizes counties "to purchase and hold real and personal estate for the use of the county, and lands sold for taxes as provided by law." We have little difficulty in concluding that, in this case, the real property purchase contemplated by the board of county commissioners would be for the use of the county and therefore authorized by K.S.A. 19-101 Second. A caveat should be noted regarding acquisition of the real property to be later exchanged for real property contiguous to the Sherman County landfill. In our judgment the power of eminent domain would be unavailable in this factual situation. We believe that it is improper for a public body with power of eminent domain to exercise such if the result would be to enrich one citizen at the expense of another by taking the lands of one and transferring them to another. Moreover, it is improper for a county to utilize the power of eminent domain to engage in the real estate business. See: 29A C.J.S. Eminent Domain §64(3) and City of Utica v. Damiano, 193 N.Y.S.2d 295, 299 (1959). Therefore, acquisition of the subject real property, must be accomplished by means other than exercise of eminent domain powers.

Regarding the second proposed real property acquisition, we direct attention to K.S.A. 19-2658 which provides in pertinent part:

"The board of county commissioners of any county is hereby authorized to acquire by lease, condemnation or purchase, lands to be used as a site for the disposal of refuse."
(Emphasis added.)

K.S.A. 19-2658, on its face, does not expressly authorize an exchange of real property as contemplated by the board of county commissioners. However, in The City of Enterprise v. Smith, 62 Kan. 815 (1900), the Supreme Court of Kansas discussed the word "purchase" as follows:

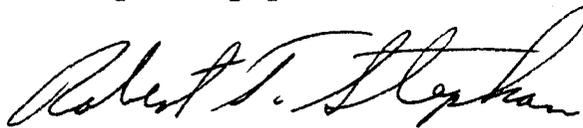
"The word 'purchase' has two significations -- a popular but restricted one, and a legal but enlarged one. The definition of the word in its legal and general sense is given as follows: 'A term including every mode of acquisition of estate known to the law, except that by which an heir on the death of his ancestor becomes substituted in his place as owner by operation of law.' (Bouvier.) Blackstone defines the word in its legal and enlarged sense in the same way, but, after doing so, says: 'Purchase, indeed, in its vulgar

and confined acceptance, is applied only to such acquisitions of land as are obtained by way of bargain and sale for money, or some other valuable consideration.' (2 Bla. Com. 241.) 'A purchase, in the ordinary and popular acceptance of the term, is the transmission of property from one person to another, by their voluntary act and agreement, founded on a valuable consideration. But, in judgment of law, it is the acquisition of land by any lawful act of the party, in contradistinction to acquisition by operation of law; and it includes title by deed, title by matter of record, and title by devise.' (4 Kent, Com., 14th ed., 441.) 'The word "purchase," in common sense, means no more than when a man gives money for anything, but in a legal sense every man is a purchaser of an estate who does not take it by descent.' (Martin v. Strachan et al., 1 Wils. 72.)" 62 Kan. at 817-818. (Emphasis added.)

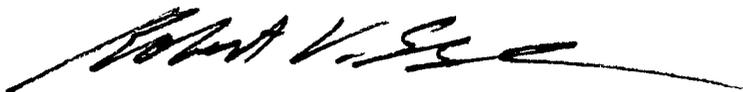
The broad interpretation of "purchase" by the Court in Smith, supra, includes acquisitions of real property by various modes, including exchange. Therefore, adopting the Court's construction of "purchase," the board of county commissioners would be within the authority conferred in K.S.A. 19-2658 where it authorizes an exchange of county-owned property in order to acquire additional land for use as a landfill.

In conclusion, K.S.A. 19-2658 authorizes the board of county commissioners to exchange county-owned property for a parcel of real property which would be utilized as a county landfill.

Very truly yours,



ROBERT T. STEPHAN
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Robert V. Eye
Assistant Attorney General