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February 22, 1984

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ATTORNEY GENERAL OPINION NO. 84- 20

The Honorable Larry E. Erne
State Representative, Seventh District
State Capitol, Room 281-W
Topeka, Kansas 66612

Re: Roads and Bridges--State Highways--Acquisition of
Title or Easement by Secretary of Transportation;
Disposition of Property or Interest

Synopsis: Pursuant to the provisions of K.S.A. 68-423b et seq., the secretary of transportation is authorized to acquire property for use as roadside parks and rest areas, and to establish, construct and maintain such parks and rest areas. The secretary of transportation has general supervision over the maintenance of all roads, and has authority to dispose of any real estate, or interest therein, when the same is no longer needed for state highway purposes. Pursuant to these powers, the secretary may close roadside parks and rest areas, and dispose of real property, or interests therein, used for such purposes. The power to close a roadside park or rest area which was established through cooperation with the federal government, or local units of government, is subject to any contractual conditions governing the closing of such parks or rest areas. Cited herein: K.S.A. 1983 Supp. 68-404, 68-413, K.S.A. 68-423b, 68-423f.

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Dear Representative Erne:

You request our opinion as to whether the Secretary of Transportation has authority to destroy roadside parks, rest

areas and access roads that were constructed with state highway funds.

Pursuant to the provisions of K.S.A. 68-423b et seq., the secretary of transportation is authorized to acquire property for use as roadside parks, rest areas and access roads, and to establish, construct and maintain such parks and rest areas. K.S.A. 68-423f empowers the secretary of transportation to adopt regulations governing the use of roadside parks and rest areas. Although these statutes indicate that the secretary of transportation has administrative authority over roadside parks and rest areas, they do not expressly authorize the closing of such parks or rest areas. However, in this regard, it is necessary to examine other statutes granting broad powers to the secretary of transportation.

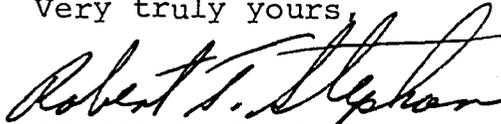
The secretary of transportation has general supervision over the construction and maintenance of all roads. K.S.A. 1983 Supp. 68-404. He or she has authority to dispose of any real property, or interest therein, which has been acquired for state highway purposes when such real estate is no longer needed for such purposes. K.S.A. 1983 Supp. 68-413(d)(1). It has been held that a rest area or roadside park is a valid "highway purpose," Norris v. State, 67 Cal. Rptr. 595, 600 (C.A. Calif., 1968), and it is our opinion that the authority granted by subsection (d) of K.S.A. 1983 Supp. 68-413 includes the power to dispose of rest areas and roadside parks which the secretary of transportation determines are no longer needed for state highway purposes. Therefore, in our judgment, the secretary may close a rest area or roadside park, and access roads, and dispose of the subject real property, pursuant to the provisions of K.S.A. 1983 Supp. 68-413.

We are advised by officials of the Kansas Department of Transportation that, except for rest areas on interstate highways (which are not affected by recent decisions of the Department), federal funds have not generally been utilized in the construction of the many roadside parks and rest areas in this state. However, in the event that any such park or rest area has been constructed through cooperation with the federal government, the power to close such rest area or roadside park is subject to any contractual limitations governing the closing of such parks or rest areas. Additionally, if any park or rest area has been constructed through cooperation with a local unit of government, the power to close such park or rest area must, in our opinion, be exercised

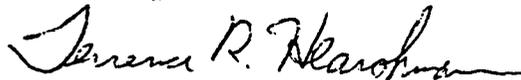
The Honorable Larry E. Erne
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in accordance with any contractual agreement between the state
and the local unit of government.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm