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September 27, 1985

ATTORNEY GENERAL OPINION NO. 85-129

Dale L. Pohl
Eureka City Attorney
Forbes & Pohl
P.O. Box 528
Eureka, Kansas 67045

Re: Eminent Domain--Condemnation in Cities--Cities;
Authority to Condemn; Interest Acquired

Synopsis: The City of Eureka did not acquire fee simple absolute title to property acquired by eminent domain proceedings in 1958 for a municipal airport so as to enable the city to convey fee simple absolute title in portions thereof to purchasers for industrial sites. Cited herein: G.S. 1949, 26-201, 26-203, 26-204; L. 1955, ch. 213, §1.

* * *

Dear Mr. Pohl:

You request our opinion as to the status of title to certain property which the City of Eureka acquired by eminent domain in 1958 for use as a municipal airport. Specifically, you ask whether the conclusion reached in Attorney General Opinion No. 77-17 remains valid in light of the opinion of the court in Board of Education of Unified School District 512 v. Regnier Builders, Inc., 231 Kan. 731 (182).

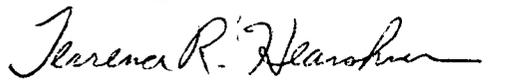
In Attorney General Opinion No. 77-17, Attorney General Schneider, relying upon Sutton v. Frazier, 183 Kan. 33 (1958), concluded as follows:

"The City of Eureka did not acquire fee simple absolute title to property acquired by eminent domain proceedings in 1958 for a municipal airport which would enable the city to convey fee simple absolute title to portions thereof to purchasers for industrial sites."

In Regnier, supra, the Supreme Court limits the application of Sutton, supra, to its specific facts, i.e. the taking of property by an improvement district. 231 Kan. at 745. Therefore, the holding of Sutton, that the right to condemn land and take title in fee simple cannot emanate from an eminent domain procedural statute (see 183 Kan. at 40) no longer retains its efficacy. However, this partial reversal of Sutton does not change the conclusion in Attorney General Opinion No. 77-17, for the reason that neither the enabling statute nor the procedural statutes under which the City of Eureka acquired the airport property may be interpreted as conferring authority to take title in fee simple for an airport. G.S. 1949, 26-201, 26-203, 26-204; L. 1955, ch. 213, §1. (While K.S.A. 26-204 now confers authority to take title in fee simple for an airport, such authority did not exist in 1958 when the Eureka Airport property was condemned.) Accordingly, we affirm the conclusion reached in Attorney General Opinion No. 77-17.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:jm