



STATE OF KANSAS

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March 31, 1986

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ATTORNEY GENERAL OPINION NO. 86- 46

The Honorable Anthony Hensley
State Representative, Fifty-Eighth District
State Capitol, Room 278W
Topeka, Kansas 66612

Re: Eminent Domain--Condemnation in Cities--
Authority to Condemn

Synopsis: Pursuant to the provisions of K.S.A. 26-201, a city may appropriate private property for public purposes when such appropriation is deemed necessary by the city governing body. Accordingly, a city may acquire by condemnation property which includes a burial plot. Additionally, the owner of property condemned under K.S.A. 26-201 may not compel a city to pay the cost of removing and reintering bodies buried upon property condemned by the city. Cited herein: K.S.A. 26-201, 26-513.

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Dear Representative Hensley:

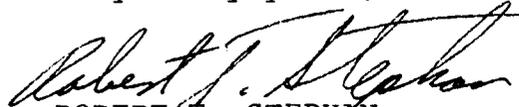
You request our interpretation of K.S.A. 26-201 and 26-513. Specifically, you ask whether a city may condemn property which includes a family burial plot and whether a city must pay the cost of removing and reintering bodies buried upon property condemned by the city.

Under the provisions of K.S.A. 26-201, a city may appropriate private property for public purposes when such appropriation is deemed necessary by the city governing body. Accordingly,

in our judgment a city may acquire by condemnation property which includes a family burial plot.

In regard to the cost of removing and reintering bodies buried upon property condemned by a city, K.S.A. 26-513 prescribes certain factors which are to be considered in ascertaining the amount of compensation and damages in an eminent domain proceeding. In construing this statute, the Kansas Supreme Court has held that the cost of removing personal property is not a proper element of damage for which an owner may be compensated. City of Manhattan v. Eriksen, 204 Kan. 150, 153 (9169). While it may be somewhat insensitive to refer to a dead body as "personal property," it has been generally held that there is a quasi-property right in dead bodies. See 22 Am.Jur.2d, Dead Bodies §4. Accordingly, pursuant to the Eriksen case, supra, it is our opinion that the owner of real property condemned under K.S.A. 26-201 may not compel a city to pay the cost of removing and reintering bodies buried upon property condemned by the city. However, should the city wish to make use of the property in such a way that requires the graves to be obliterated or disturbed, it is responsible for removal and reinterment of the remains.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:jm