



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 1, 1987

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 87- 78

Keith Wilson
Liberal Assistant City Attorney
419 North Kansas
P.O. Drawer I
Liberal, Kansas 67901

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

Synopsis: Pursuant to the provisions of K.S.A. 26-201, a city may appropriate private property by eminent domain for a public use. Acquisition of a railroad depot building which is included on the state register of historic places constitutes a public use. Cited herein: K.S.A. 26-201; 75-2714.

* * *

Dear Mr. Wilson:

You request our opinion as to whether the city of Liberal may utilize the power of eminent domain to acquire a railroad depot building which occupies the status of a designated historical site under the jurisdiction and control of the Kansas State Historical Society.

Pursuant to the provisions of K.S.A. 26-201, a city may appropriate private property for public uses when such appropriation is deemed necessary by the city governing body. It has been held that land invested with unusual historical interest may be taken for the use and benefit of the state by condemnation, and that such a use is a public use. State, ex rel., v. Kemp, 124 Kan. 716 (1927). Although we are

unaware of any Kansas case which considers the question, an authority on the law of municipal corporations concludes that a city may use eminent domain power to preserve historical property:

"A taking to preserve historical property represents a proper public use.

"It has been stated that a city has power to take reasonable steps to prevent the destruction of the city's heritage and to provide for the preservation of those buildings that may contribute to civic pride, to the education and cultural benefit of the public, and to encouragement of tourism.

"While a city may use eminent domain power to preserve historical landmarks within its boundaries, it will not be required to use such power when a less expensive alternative is available, especially where the city is in financial distress."

McQuillin, Municipal Corporations
§32.49a (3d Ed. 1983).

In accordance with the above authorities, it is our opinion that a taking to preserve historic property represents a proper public use, and a city may use the power of eminent domain to acquire a railroad building which is included on the state register of historic places. However, it should be noted that subsection (b) of K.S.A. 75-2714 provides that:

"No agency or political subdivision of the state and no other entity shall exercise the power of eminent domain with respect to any property under the society's [state historical society] jurisdiction and control without the prior written approval of the society."

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General