



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88-109

Terry D. Hamblin, Director  
Kansas Department of Revenue  
Docking State Office Building  
Topeka, Kansas 66612-1585

Re: Taxation--Rules for Valuing Property--Public  
Property Used for Private Purposes

Synopsis: Fee title to real estate properly dedicated to  
public use vests in the local unit of government in  
trust for such public use, and may not be lost  
through nonuse. Absent an exemption, the local  
unit of government which owns the fee is  
responsible for property taxes thereon. Cited  
herein: K.S.A. 1987 Supp. 12-406.

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Dear Mr. Hamblin:

As Director of the Division of Property Valuation, you request our opinion regarding assessment and taxation of platted parcels of land which have been properly dedicated for public use but for some reason have never been so used or have ceased to be used for a public purpose but have not been vacated. Specifically you question who should be taxed on such platted land, the entity using it for a private purpose or the city or county which owns the fee title. We will assume that no exemptions are available.

Pursuant to K.S.A. 1987 Supp. 12-406, a plat caused to be made by the owner of real property which is acknowledged, certified, filed and recorded with the register of deeds of the county in which such property is located constitutes sufficient conveyance to vest the fee title to the streets, alleys, levees, parks, etc. in the city for public use. This statute codifies the common law principle discussed in Wallace v. Cable, 87 Kan. 835, 838 (1912):

"Where the owner of real property lays out a town upon it, and divides the land into lots and blocks, intersected by streets and alleys, and sells any of the lots with reference to such plan, or where he sells with reference to the map of a town or city, in which his land is so laid off, he thereby dedicates the streets and alleys to the use of the public, unless it appears either by express statement in the conveyance or otherwise that the mention of the street was solely for purposes of description and not as a dedication thereof."

Kansas courts have held that the fee title to real estate properly dedicated to public use vests absolutely in the local unit of government which "forever afterward holds the property in trust for such use." Douglas County v. City of Lawrence, 102 Kan. 656, 658 (1918) (emphasis added), citing Railroad Co. v. Garside, 10 Kan. 552, syl. ¶ 1 (1872); Wood v. National Water Works Co., 33 Kan. 590 (1885). Thus it was held that:

"While a municipal corporation may part with its private, proprietary rights through conveyances, or lose them through prescription, adverse possession, or by statutes of limitation, yet the great weight of authority is that those rights, duties and privileges which are conferred or imposed upon a municipal corporation exclusively for the public benefit are not ordinarily lost through nonuse, laches, estoppel or adverse possession, nor are statutes of limitation applicable thereto." Douglas County v. City of Lawrence, 102 Kan. at 659. See

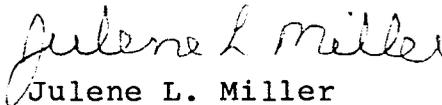
also, Wallace v. Cable, 87 Kan. at  
840; Attorney General Opinion No. 87-93.

Based upon the above-cited authorities, fee title to the real estate you describe, dedicated to public use when the plats were acknowledged, certified and recorded with the appropriate register of deeds, has vested in the local unit of government in trust for such public use, and such title is not lost through nonuse, regardless whether the property was never so used or merely ceased to be so used. As we are unaware of any authority for taxing other than the fee owner in such instances, it is our opinion that, absent an exemption, the county or city should be assessed the taxes on this real estate.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm