

Approved 2/24/88
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at
Chairperson

9:00 a.m./~~pm~~ on February 18, 1988 in room 254-E of the Capitol.

All members were present except:

Sen. Francisco

Committee staff present:

Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Ed DeSoignie, Department of Transportation
Joe Krahn, Chief of Right of Way, KDOT

Hearing on S.B. 575 - Relocation assistance by KDOT.

Ed DeSoignie, Department of Transportation, said this bill had been requested to resolve conflicts which currently exist between the Kansas debt set-off statutes and federal regulations. Enactment of this bill will insure continued federal participation in highway construction projects. A copy of his statement is attached. (Attachment 1).

Hearing on S.B. 576 - Certain powers of secretary of transportation.

Ed DeSoignie, Department of Transportation, said this bill would authorize the Secretary of Transportation to purchase fee simple title when acquiring right of way.

Joe Krahn, Chief of Right of Way, KDOT, said in some situations where a small tract of land is separated from the parent tract, KDOT pays damages, sometimes as high as the actual value of the land without obtaining title to the damaged property. This proposal would allow the Secretary to obtain title and he could have the opportunity of recovering some of the tax money spent. It would give the taxpayers what they are paying for. Kansas is only one of seven states that do not condemn fee title for highway right of way. A copy of his statement is attached. (Attachment 2).

Action on S.B. 575 - A motion was made by Sen. Hayden and was seconded by Sen. Vidricksen to recommend S.B. 575 favorable for passage. Motion carried.

Action on S.B. 576 - A motion was made by Sen. Vidricksen and was seconded by Sen. Frey to recommend S.B. 576 favorable for passage. Motion carried with Sen. Hayden voting "No".

Meeting was adjourned at 9:45 a.m.

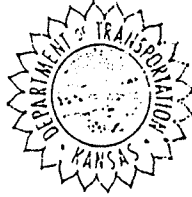
DATE: 2-18-88

ROOM: 254-E

GUEST REGISTER
SENATE
TRANSPORTATION AND UTILITIES COMMITTEE

NAME	ORGANIZATION	ADDRESS
TOM DAY	KCC	TOPEKA
Pert Wiechman	K.A.D.R.A.	Topeka
RON CALBERT	U.I.U	NEWTON
Ed DeSoignie	KDOT	Topeka
Ruth Dame	ISLE	HOISINGTON
John Scheumann	KDOT	Topeka
Joseph Krahn	KDOT	Topeka

STATE OF KANSAS



KANSAS DEPARTMENT OF TRANSPORTATION

*Docking State Office Building
Topeka 66612-1568
(913) 296-3566*

Horace B. Edwards
Secretary of Transportation

February 18, 1988

Mike Hayden
Governor of Kansas

MEMORANDUM TO: The Senate Transportation and Utilities Committee

FROM: The Kansas Department of Transportation

REGARDING: Senate Bill 575

Senate Bill 575 by the Committee on Transportation and Utilities was requested by the Department of Transportation to resolve conflicts which currently exist between the Kansas debt set-off statutes as codified at K.S.A. 75-6201 et. seq. and Federal regulations as codified at 49 CFR 25.207.

Highway rights-of-way acquisitions involving use of Federal aid are governed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601 et. seq.). Federal regulations promulgated by the United States Department of Transportation (Federal Register, Volume 51, No. 39, Part Four) allow deductions from relocation assistance payments to an individual for any advance relocation payments made to such individual. The withholding of any part of a relocation assistance payment to satisfy an obligation to any other creditor, including the state, is prohibited by the regulations. The Department has been previously notified by the Federal Highway Administration that a conflict exists between the Kansas Debt Set-Off Law and the Federal law. The proposed legislation would eliminate such conflict.

Enactment of Senate Bill 575 would insure continued Federal participation in highway construction projects. Enactment of the provisions of Senate Bill 575 into law would not impact the Department over and above the Governor's recommended budget for Fiscal Year 1989. I am enclosing a copy of the provision from the Federal regulations prohibiting the withholding of amounts from relocation assistance payments, and a copy of the Federal Highway Administration's letter to the agency identifying the conflicts between the State and Federal law.

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(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in monthly housing costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes for filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

§ 205 Relocation assistance advisory services.

(a) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527), and offers the services described in paragraph (b) of this Section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project has caused substantial economic injury because of such acquisition, it may offer the services to such person.

(b) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(1) Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(2) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 204(a).

(i) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the

replacement housing payment (see § 403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(ii) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 2 (c) and (e).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(iii) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(iv) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(3) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(4) Minimize hardships to persons in adjusting to relocation by providing counseling; advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(5) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loans and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to persons to be displaced.

(c) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

§ 206 Eviction for cause.

Eviction for cause must conform to applicable State and local law. Any person who has lawfully occupied the real property, but who is later evicted

for cause on or after the date of the initiation of negotiations, retains the right to the relocation payments and other assistance set forth in these regulations. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves or the date a comparable replacement dwelling is made available, whichever is later.

§ 207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* All claims for a relocation payment shall be filed with the Agency within 18 months after:

(1) For tenants, the date of displacement;

(2) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one displacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

Deductions from relocation payments. An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 204 of these regulations. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) **Notice of denial of claim.** If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§ 208 Relocation payments not considered as income.

No relocation payment received by a displaced person under these regulations shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

Subpart D—Payment for Moving and Related Expenses

§ 301 Payment for actual reasonable moving and related expenses—residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 2(f)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

- (a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.
- (b) Packing, crating, unpacking, and uncrating of the personal property.
- (c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
- (d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § 305, as the Agency determines to be reasonable and necessary.

§ 302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling, or a seasonal residence, is entitled to receive a fixed payment in lieu of a payment for actual moving and related expenses under § 301, that consists of:

- (a) A moving expense allowance not to exceed \$300 which shall be determined in accordance with the applicable moving allowance schedule approved by the Federal Highway Administration; and
- (b) A dislocation allowance of \$200.

§ 303 Payment for actual reasonable moving and related expenses—nonresidential moves.

(a) **Eligible costs.** Any business or farm operation which qualifies as a displaced person (defined at § 2(f)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

- (1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.
- (2) Packing, crating, unpacking, and uncrating of the personal property.
- (3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at § 303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, and the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)
- (4) Storage of the personal property for a period not to exceed 12 months,

unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for—

- (i) Planning the move of the personal property;
 - (ii) Moving the personal property; and
 - (iii) Installing the relocated personal property at the replacement location.
- (9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds

March 30, 1987

Relocation Payment

Mr. W. H. Wright
State Transportation Engineer
Kansas Department of Transportation
Topeka, Kansas 66612

Attention: Joe Krahn, Chief, Bureau of Right-of-Way

Dear Mr. Wright:

The section for Withholding of Relocation Payments in KDOT's Draft Relocation Manual has been reviewed. The section provides that KDOT may deduct any advance payment, rent owed the agency, and off set for debts owed the State in accordance with provisions of K.S.A. 75-6201 et seq.

CFR 49 25.207 has provisions for deduction for advance payments and rent owed the agency with the provision that no deduction shall be made if it would prevent the displaced person from obtaining comparable replacement dwelling and is specific that the State shall not withhold any part of the relocation payment to satisfy other creditors.

The off set payment is not permitted by CFR 49 25.207 and for KDOT to withhold in compliance with the off set will jeopardize Federal participation in the project.

The provision in CFR that no deduction shall be made if it would prevent the displaced person from comparable replacement dwelling should also be added to KDOT's manual.

We are available to discuss this issue.

Sincerely yours,

/s/ Earl H. White

For Robert J. Deatrick
Division Administrator

EHWhite:dsl

Kansas Department of Transportation

February 18, 1988

MEMORANDUM TO: THE SENATE TRANSPORTATION & UTILITIES COMMITTEE

FROM: THE KANSAS DEPARTMENT OF TRANSPORTATION

RE: SENATE BILL NO. 576

State law (K.S.A. 68-413) now authorizes the Secretary of Transportation to purchase fee simple title when acquiring right of way. The law also provides that the Secretary may purchase uneconomic remnants and entire lots, blocks or tracts of land for highway purposes, even though the entire lots, blocks or tracts are not immediately needed for state highway purposes if the Secretary finds that by so doing, the interests of the public will be best served. The law does not authorize the Secretary to condemn fee title, except for shop sites, and does not authorize condemnation of uneconomic remnants or entire lots, blocks or tracts of land even if the public would be best served by such acquisition.

Enactment of Senate Bill No. 576 would enable the Secretary to condemn fee title when acquiring right of way and to condemn uneconomic remnants and entire lots, blocks or tracts of land when the Secretary finds that by so doing, the interest of the public would be best served. It should be noted that K.S.A. 68-413 (b) (3) has not been changed, thereby continuing the restriction in current law precluding the Secretary from condemning oil and gas mineral interests, except for shop sites.

The request that the Legislature consider expanding the Secretary's power to condemn fee title was based on several factors. Getting the taxpayers what they pay for was a primary consideration. When the Secretary condemns a permanent easement for right of way and removal of borrow, he invariably pays at least 100% of the value of the land taken plus damages to the remainder when appropriate.

In situations where a small tract of land is separated from the parent tract or landlocked, KDOT pays damages, sometimes as high as the actual value of the land without obtaining title to the damaged property. This proposal would allow the Secretary to obtain title and have the opportunity to recover some of the tax money expended. Under the present statute, the Secretary can purchase but cannot condemn in these situations. Consequently, substantial damages to the remainder are paid in condemnation with absolutely no chance to recoup these payments.

KDOT now offers to purchase uneconomic remnants and other tracts where our appraisals indicate damages to remainders that approach or equal the value of the remainder. However, many landowners prefer to keep the land and receive substantial payments for damages and then sell it to an adjacent owner, thereby getting a windfall of sorts at the expense of the taxpayers.

There are instances in the recent past where KDOT was able to purchase entire properties instead of a partial acquisition with substantial damages to the remainder. The property which was not needed for highway purposes was traded to other landowners in the area affected by the project in lieu of or coupled with reduced monetary compensation. We were fortunate in being able to purchase the property that was traded. Enactment of Senate Bill No. 576 would reduce the need for good luck by enabling the Secretary to condemn if purchase negotiations reach an impasse.

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The requested authority to condemn in fee is also needed when acquiring replacement property for wetlands or parkland. This authority could also facilitate damage mitigation efforts when it would be in the public interest to acquire property from one party and convey to another.

Many landowners do not understand the distinction between permanent easements and fee title and assume the state obtains fee title through condemnation. In a typical condemnation for highway right of way, retention by the condemnee of the underlying fee and the oil and gas mineral interests is of little interest to the owner of the property being condemned unless there is significant oil and gas activity in the area. Creation of an underlying fee owner by condemning a permanent easement means that if the property ever becomes surplus, it can only be released to the current holder of the underlying fee, i.e. the party whose land was condemned or that person's heirs or assigns.

Since many condemnees do not realize they retained the underlying fee, little or no attention is paid to this matter when their remaining property is conveyed. Consequently, in many instances, the current owner of property adjacent to surplus highway right of way is not the heir or assign of the underlying fee owner. This situation presents problems for KDOT as well as current adjacent owners seeking to obtain surplus right of way since the property should only be released to the current owner of the underlying fee. When an underlying fee owner dies intestate, that interest is often divided into fractional shares, with the owners sometimes not even aware of their interest. Years later, it is often difficult to determine and locate the current underlying fee owners. Conveyance of a deed by the Secretary to someone outside the chain of title would not be appropriate.

It should be noted that K.S.A. 68-413 presently empowers the Secretary to charge a fee for the release of permanent easements, as opposed to city streets, which when vacated revert to the adjacent owners at no cost.

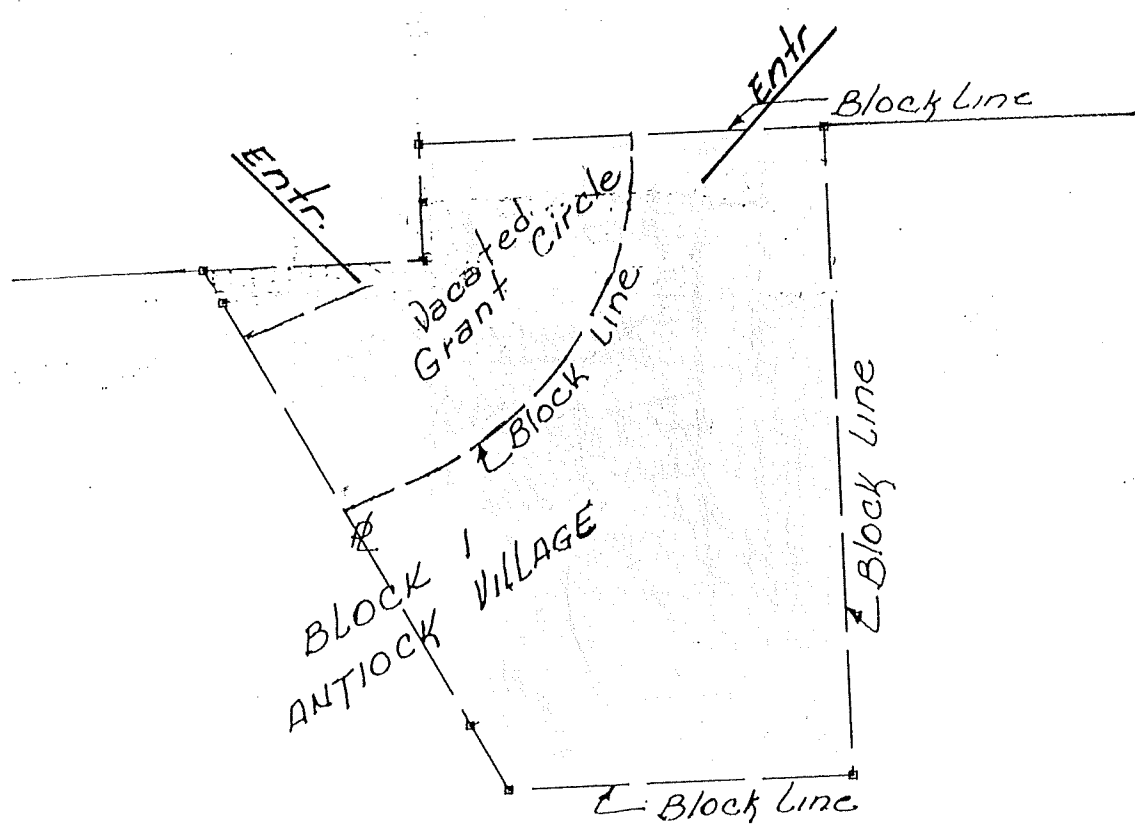
Information obtained during the 1987 Special Session indicates that Kansas is one of only seven states that do not condemn fee title for highway right of way. A number of states that condemn fee title, including Nebraska, Iowa, Oklahoma, Colorado, and Texas, do not condemn the oil and gas mineral rights when acquiring highway right of way.

Enactment of this proposal would get the taxpayers what they are paying for, provide more flexibility to trade property during and after project acquisition, facilitate improved management and disposition of property, and, in the long run, save money for the taxpayers and landowners adjacent to highways seeking to acquire excess right of way. We would also have clearer authority to replace parkland and wetlands as required by law on federal projects.

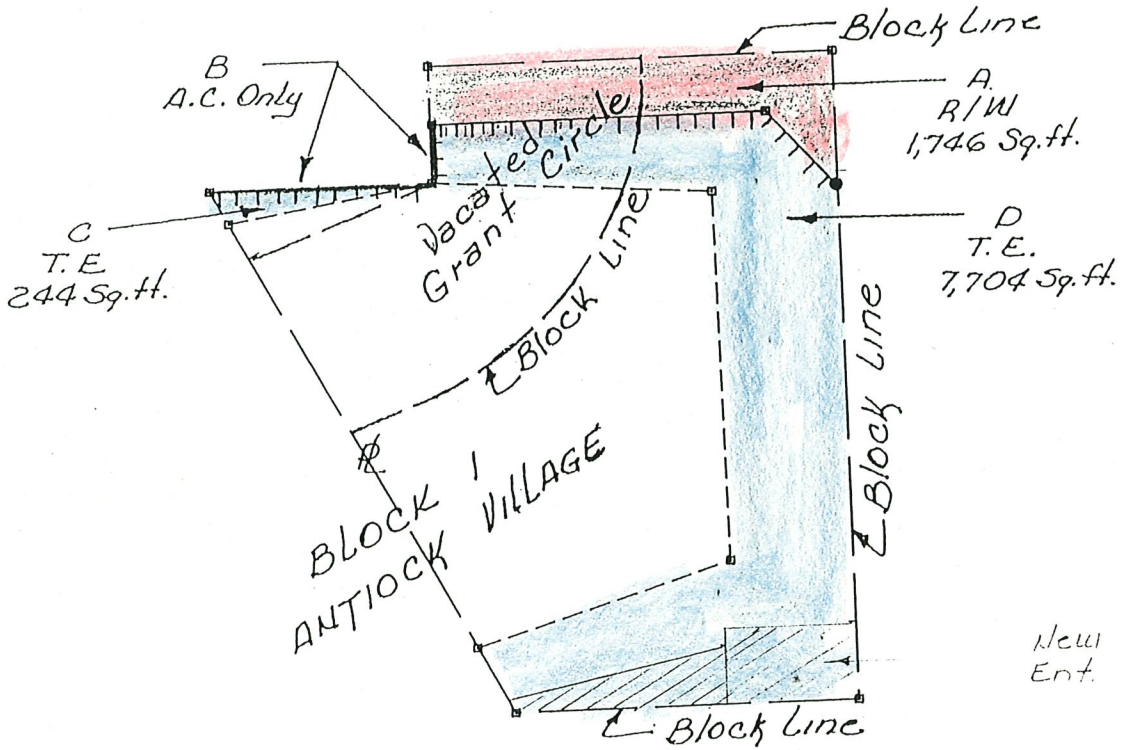
Should the need arise to utilize the advance acquisition statute (K.S.A. 68-423a), this legislation would enable the agency to recoup its investments to a greater degree when the land not needed for highway purposes is identified and ready for sale.

OIL PROPERTIES S CITY
JOHNSON COUNTY 860-1678
35-46 K 1442-01
BLOCK 1 ANTIOCK VILLAGE
4-08-83 CITY OF OVERLAND PARK

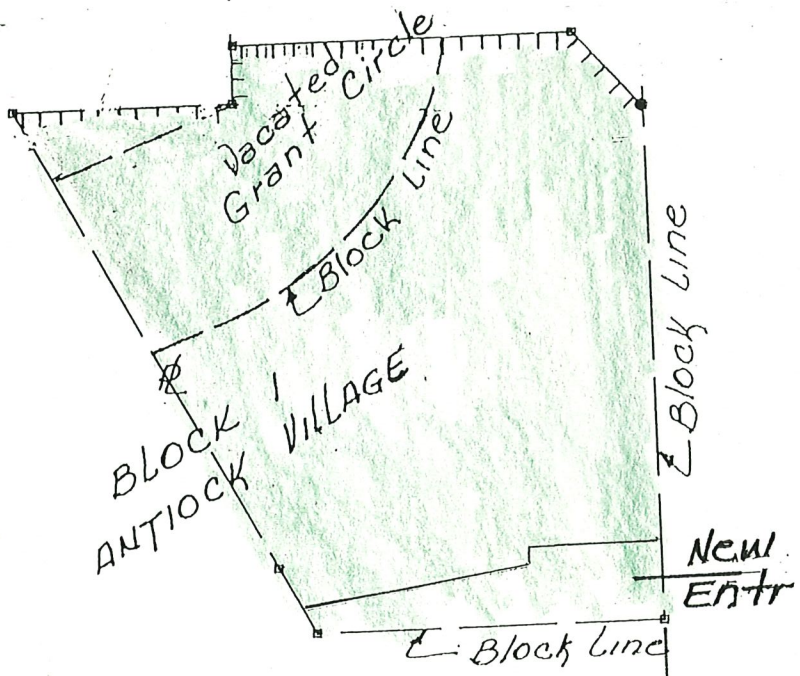
75th St.



AREA 22,518 Sq. Ft.



75th St.



Frontage Road

AREA 20,772 Sq. Ft.

