

ORDINANCE NO. 163

AN ORDINANCE AUTHORIZING AND EMPOWERING THE CITY ATTORNEY FOR THE CITY OF ANDOVER, KANSAS TO ENTER INTO A PROFFERED AND UNCONFIRMED SETTLEMENT OF A JUDGMENT IN A CERTAIN ACTION IN THE DISTRICT COURT OF BUTLER COUNTY, KANSAS ENTITLED HAROLD RICKARD AND BUELAH CLARK RICKARD, PLAINTIFFS VS. CITY OF ANDOVER, KANSAS, CASE NO. 29,156, WHICH CASE IS NOW ON APPEAL TO THE SUPREME COURT OF THE STATE OF KANSAS; AND FURTHER AUTHORIZING A SETTLEMENT OF CERTAIN OTHER CLAIMS PENDING AGAINST SUCH CITY BY SAID HAROLD RICKARD AND BUELAH CLARK RICKARD; AND PROVIDING FOR THE PAYMENT OF THE SUM OF \$18,500.00 IN SETTLEMENT OF SAID CASE NO. 29,156 AND COINCIDENT THEREWITH TO PAY THE SUM OF \$2,150.00 FOR A RELEASE FROM ALL CLAIMS PENDING SINCE THE VERDICT IN SAID CASE NO. 29,156 AS WELL AS SAID SUM ALSO BEING POSTED AS AN OPTION PAYMENT ON THE PURCHASE OF CERTAIN LAND OWNED BY THE SAID HAROLD RICKARD AND BUELAH CLARK RICKARD FOR AN ADDITIONAL SUM OF \$19,350.00 AND OTHERWISE SUMMARIZING CERTAIN CONDITIONS TO BE IMPOSED AND ACCEPTED AS TERMS OF SUCH SETTLEMENT AND RESERVING UNTO SAID CITY ANY AND ALL RIGHTS OF ACTION WHICH IT MAY HAVE AGAINST ANY PERSON, FIRMS OR CORPORATIONS OTHER THAN THE SAID HAROLD RICKARD AND BUELAH CLARK RICKARD, INCLUDING INSURORS OF SAID CITY FOR REIMBURSEMENT TO SAID CITY FOR ANY AND ALL LOSSES SUSTAINED BY IT BY REASON OF ANY SUMS PAID UNDER THE TERMS OF THIS ORDINANCE AND FURTHER AUTHORIZING THE CITY ATTORNEY, THE MAYOR AND CITY CLERK OF SAID CITY TO ENTER INTO ANY AND ALL NECESSARY ORDERS, MEMORANDUMS OF SETTLEMENT AND FURTHER AUTHORIZING THE PAYMENT OF THE SUMS ABOVE MENTIONED PLUS ACCRUED COURT COSTS FROM THE JUDGMENT REVENUE REFUNDING ACCOUNT OF SAID CITY WHEN AND IF FINAL MEMORANDUM OF SETTLEMENT AND JOURNAL ENTRY OF DISMISSAL AND RELEASES ARE ENTERED INTO BETWEEN THE COUNSEL FOR HAROLD RICKARD AND BUELAH CLARK RICKARD AS WELL AS THE ATTORNEYS FOR THE CITY OF ANDOVER, KANSAS.

WHEREAS, prior hereto a verdict and judgment in the District Court of Butler County, Kansas in the case styled Harold Rickard and Buelah Clark Rickard, Plaintiffs vs. City of Andover, Kansas, Defendant, Case No. 29,156 was entered in the amount of \$19,060.00 against the City of Andover, and

Whereas, the prayer of the Plaintiffs Rickard for injunctive and equitable relief against said City was by the Court denied in the same action, and

Whereas, both the Plaintiffs and the Defendant in said action have appealed the verdict and decision of said Court to the Supreme Court of the State of Kansas, and

Whereas, the said action was filed by the Plaintiffs Rickard by reason of their allegations that the City of Andover, Kansas had improperly operated and maintained its sewage treatment plant on property adjoining the property owned by Rickards, and

Whereas, since said verdict and judgment, the Plaintiffs Rickards have filed additional claims administratively against the City of Andover, Kansas, and

Whereas, the City of Andover, Kansas may need additional lands owned by Rickards for the purpose of enlarging and reconstructing of its sewage plant operations, and

Whereas, in order to reconstruct and enlarge said sewage plant additional engineering and application for permits from the State of Kansas and application for grants from various agencies of the Federal Government are or may be necessary, all of which processes may take as long a period as two years, and

Whereas, the Governing Body of the City of Andover, Kansas desires to finally and in all respects settle the said litigation now on appeal to the Supreme Court of the State of Kansas all administrative claims since said judgment and now pending against said City and desires to obtain the right and option to purchase a portion of the land owned by Rickards within said two year period for such enlargement and reconstruction of the sewage treatment plant,

NOW THEREFORE

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ANDOVER, KANSAS:

Section 1: That upon the execution of the proper memorandum of settlement and journal entries of release and settlement and release of administrative claims pending to date, the nature of all of which is set out in the caption and preamble of the Ordinance and upon full approval of the city attorneys, the Mayor and City Clerk and other necessary City officials of said City are hereby authorized and directed without further enactment of the Governing Body of Andover, Kansas to withdraw and pay from the Judgment Refunding Account of said City the sum of \$18,500.00 to Harold Rickard and Buelah Clark Rickard.

Section 2: That subject to the procedures above mentioned in the preamble and caption of this Ordinance and Section 1 of this Ordinance and upon the approval of the city attorneys, the Mayor and City Clerk and other necessary City officials are hereby authorized without further enactment of the Governing Body of the City of Andover, Kansas, to deposit with any Kansas banking or trust company the sum of \$2,150.00, which sum shall be withdrawn from the Judgment Refunding Account of said City, in release of all administrative claims pending by the said Harold Rickard and Buelah Clark Rickard against the City of Andover, Kansas to the 1 day of February, 1972; and the same consideration shall also be a down payment option and liquidated damages for the purchase of the following described real property located in Butler County, Kansas, to-wit:

West Half ($W\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of
Section Eight (8), Township Twenty-Seven (27),
Range Three (3) East, less railroad and Kansas
Turnpike Authority right-of-way

such land to be purchased, if such option is exercised, in fee simple for the expansion of the sewage treatment system of the City of Andover, Kansas and for any other lawful municipal purposes excepting that portion of said lands lying South of the railroad right-of-way shall not be used for sewage treatment pits or lagoons for the additional sum of \$19,350.00.

Section 3: That it is hereby declared by the Governing Body to be its intention in the enactment of this Ordinance to outline the conditions on which the city's attorneys may enter into and effect a full and final settlement of the disputes and litigations recited hereinabove and said attorneys are authorized to take such any and further action as is necessary to effect settlement within the terms outlined in this Ordinance but are not authorized to bind said City to any agreements or memorandums which monetarily affects the City more adversely than the terms outlined hereinabove excepting for the payment of court costs.

Section 4: Nothing herein shall be construed as abrogating, releasing or waiving any right which the City may have against any third person, firms or corporations including insurers for reimbursement for any losses occasioned to said City by reason of the settlements authorized herein.

Section 5: That this Ordinance shall be deemed to be administrative in nature to be enacted as urgent and in an emergency and without the necessity of first reading of the same as otherwise might be required by Ordinance No. 147 of the City of Andover, Kansas as passed and adopted on the 10th day of November, 1970.

The above Ordinance passed and adopted this 25th day of January, 1972.

Patricia M. Stuenkel
City Clerk

Eugene Miller
Mayor

(SEAL)