

FILE

Subject

*Highway-Road Bridges
Bridges & Culverts*



Copy to _____

STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

July 15, 1974

Opinion No. 74-234

Mr. Grey Dresie
Dresie, Jorgensen & Wood
815 Union National Building
Broadway and Douglas
Wichita, Kansas 67202

Dear Mr. Dresie:

K.S.A. 68-1103, originally enacted as ch. 80, § 3, L. 1917, commences thus:

"Whenever it is necessary to construct or repair any bridge or culvert on any county road in any county of the state, the board of commissioners of such county shall appropriate a sum not exceeding . . . (\$160,000) to meet the county's share" [Emphasis supplied.]

K.S.A. 68-1107 states thus:

"Bridges and culverts located on public roads or highways of this state shall be classified as follows:

(a) All bridges located on county or township roads shall be known as 'county bridges';

(b) all culverts located on county roads or within the right of way lines of a county road shall be known as 'county culverts';

(c) all culverts located on township roads with a required opening of twenty-five (25) square feet or more, as determined by the county engineer, shall be known as 'county culverts';

(d) all culverts located on township roads having a required opening of less than twenty-five (25) square feet, as determined by the county engineer, shall be known as 'township culverts.'" [Emphasis supplied.]

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The underscored language of K.S.A. 68-1103, supra, has not been changed since its 1917 enactment. K.S.A. 68-1107, originally enacted as ch. 80, § 7, L. 1917, stated thus:

"That all bridges or culverts built in this state at county expense, or for which the county has granted aid, shall be known as 'county bridges' or 'county culverts,' and shall be maintained thereafter under the direction of the county board and the county engineer at county expense. All bridges or culverts on township roads built at the expense of the several townships without county aid shall be known as 'township bridges' and 'township culverts,' and shall be maintained thereafter under the direction of the township board and the county engineer at township expense."

It was amended to its present form by ch. 75, § 1, L. 1923. Thus, in the original enactment which included the predecessors of both K.S.A. 68-1103 and -1107, a clear distinction was drawn between township bridges and county bridges, the former being those bridges on township roads built at the expense of the township without county aid. This distinction was abandoned in 1923, as pointed out above, at the same time the county was required to bear the cost of construction and reconstruction of "county bridges and county culverts located on township roads."

Ch. 80, § 4, L. 1917, the predecessor of the present K.S.A. 68-1104, placed the responsibility for such township bridges on the township:

"That whenever it is necessary to construct or repair any bridge or culvert on a township road in any county of this state, the county engineer's estimated cost of which will not exceed three hundred dollars (\$300), the township board of highway commissioners of the township . . . shall appropriate from the road fund of such township a sum sufficient to meet the entire expense of the proposed work, . . . and when the . . . estimated cost of such work exceeds the sum of . . . (\$300) and is less than \$10,000 the county board shall make an appropriation from the county bridge fund and shall proceed in the same manner as provided in this act."

In 1923, at the same time bridges located in county roads were reclassified as "county bridges," the foregoing section was amended to place the responsibility for the cost of construction and reconstruction of "county bridges and county culverts located

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on township roads" on the county. As then amended, K.S.A. 68-1104 now reads, in pertinent part, as follows:

"The board of county commissioners shall construct, reconstruct, repair and maintain all county bridges and county culverts located on county roads and township roads and the cost of such work shall be paid from the bridge fund of the county. All township culverts shall be constructed, reconstructed, repaired and maintained by the township board . . . and the cost of such work shall be paid from the road fund of the township." [Emphasis supplied.]

As amended in 1921, it contained the following additional language, deleted since by subsequent amendments:

"All county bridges and county culverts located on township roads shall be repaired and maintained by the township board . . . and the cost of such work shall be paid from the road fund of the township until such bridge or culvert has been constructed or reconstructed by the county: Provided, That after such bridge or culvert has been constructed or reconstructed by the county it shall be repaired and maintained by the board of county commissioners and the cost of such work shall be paid from the county bridge fund"

Thus, in the course of amendments of the constituent sections of the original enactment, of which the quoted portion of K.S.A. 68-1103, supra, is a part, the term "county bridge" as defined by K.S.A. 68-1107 and for which the county must bear the cost of construction and reconstruction, has come to include bridges located on township roads. K.S.A. 68-1103 was enacted as an integral part of the original act providing for the construction, reconstruction and repair of bridges, and provides the means whereby the county may meet its responsibility as fixed by other provisions of the article. The phrase "any bridge or culvert on any county road," as it appears in this section must be construed in light of the subsequent amendments to other sections of the enactment. In our view, this phrase includes any "county bridge" as defined by K.S.A. 68-1107.

You inquire secondly concerning K.S.A. 68-1413, which states in pertinent part thus:

"Whenever it is necessary to replace, reconstruct or repair any bridge . . . which shall have been destroyed or rendered impassable by flood,

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high water, fire or other casualty"
[Emphasis supplied.]

You inquire whether this statute may be utilized to construct, reconstruct or repair bridges which have suffered damage, rendering them impassable to all but passenger vehicles, resulting from a number of years of intermittent high water and subsequent deterioration.

"Where general words follow specific words in an enumeration describing the legal subject, the general words are construed to embrace only those objects similar in nature to those objects enumerated by the preceding specific words." 2A Sutherland, Statutory Construction, § 47.17 at p. 103. The term "casualty," in our view, embraces only those kinds of calamitous occurrences similar in nature to the enumerated specific causes of damage, i.e., flood, high water, or fire. The kind of damage envisioned by your question is that which results over a period of years of a gradual nature in the course of natural deterioration resulting from fluctuating water levels. Thus, the term "casualty" does not, in our view, include the kind of damage which you describe. Moreover, inasmuch as the bridge remains passable, although to limited and restricted kinds of vehicular traffic, it is difficult to conclude that the bridge has been "rendered impassable" as required by K.S.A. 68-1413 to permit use of its provisions. Accordingly, we cannot but conclude that the provisions of K.S.A. 68-1413 are not available for the reconstruction of bridges subject to the kind of deterioration which you describe, and which remain passable, albeit to restricted vehicular traffic, notwithstanding that damage.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm