



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

July 2, 1976

ATTORNEY GENERAL OPINION NO. 76-201

Mr. Gary House
Chautauqua County Attorney
Post Office Box 417
Sedan, Kansas 67361

Re: Counties--Surveys--Costs

Synopsis: The costs of an official survey must be assessed equitably against the landowners whose lands are adjacent to the boundary line involved, unless the county falls within certain narrow population and assessed valuation categories of K.S.A. 19-1427, in which instance the board of county commissioners has the additional discretion to assess the costs against only the party requesting the survey.

* * *

Dear Mr. House:

You advise that recently a dispute arose between two landowners concerning a fence line between two sections. One of the parties then retained a private engineer who surveyed and determined the line. The other party refused to accept that survey, and demanded an official survey by the county surveyor. A county surveyor was appointed, notice was given to all parties, and the survey was made. The question now arises as to who must bear the cost of the survey.

The apportionment of these costs is determined by K.S.A. 19-1427, as construed by the court in *Gnadt v. Durr*, 208 Kan. 783, 494 P.2d 1219 (1972). The cited provision states in pertinent part thus:

"The cost of replacing all lost government survey corners shall be assessed to the

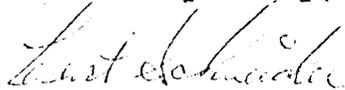
county or township The county surveyor, subject to the approval of the county commissioners, shall apportion the actual cost of the survey, after the government corners are reestablished, equitably among the landowners whose lands are situated on the boundary line, according to the respective benefits received: *Provided*, That the board of County Commissioners of . . . [certain counties] may when they deem the same advisable, provide for the assessment of the costs of making such surveys and the replacement of lost government survey corners against the party or parties requesting such survey."

In *Gnadt*, the court summarized its view of this statute thus:

"[W]here a legal survey is made, we construe 19-1427 as requiring the county surveyor, subject to the approval of the county commissioners, to apportion the actual cost of the survey equitably among the landowners whose lands are situated on the boundary line, according to the respective benefits received. The imposition of such costs upon the adjacent landowners is not conditioned upon the reestablishment of lost government survey corners. In other words, there need not be the reestablishment of *lost government survey corners* to impose the costs on adjacent landowners. . . ." [Emphasis by the court.]

Thus, if Chautauqua falls within the narrow population and assessed valuation categories specified in K.S.A. 19-1427, the board of county commissioners may, if deemed advisable, provide for assessment of the costs of the survey against the party requesting it, or, alternatively, assess the costs equitable upon both landowners whose lands are situated on the boundary line according to the respective benefits received. If the county does not fall within any of the narrow categories, the commissioners have no choice but to apportion the costs equitably among both landowners, and may not in that instance assess only the party requesting the survey.

Yours very truly,



CURT T. SCHNEIDER
Attorney General