



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

June 13, 1977

ATTORNEY GENERAL OPINION NO. 77-193

Mr. Clyde P. Daniel  
City Attorney  
Post Office Box 499  
Garden City, Kansas 67846

Re: Cities--Canals--Bridges

Synopsis: K.S.A. 42-350 applies to canals, ditches or other conduits constructed for the conveyance of water, and other openings through or across public highways or streets only when such canals, ditches or other openings are used principally for power purposes.

\* \* \*

Dear Mr. Daniel:

You inquire concerning K.S.A. 42-350, and its application to certain irrigation canals on land which has been annexed by the City of Garden City.

You advise that land which has recently been annexed to the city was only farmland, and was irrigated by canals. Although for the most part, the land irrigated by canals is no longer farmland, some remains in farm use, and is served by an irrigation canal which is within the city limits. In one or more instances, this particular canal crosses streets which are now city streets. Both the elevation of the street and culvert, and the narrowness of the culvert and its concrete abutments, constitute traffic hazards, and the city has been unable to obtain the cooperation of the irrigation company in correcting the hazardous conditions.

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The question arises whether K.S.A. 42-350 might be relied upon to correct this problem. The first sentence of that section states thus:

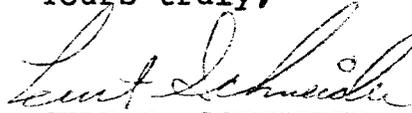
"It shall be the duty of any person, firm or corporation who are the owners and proprietors of any canal, ditch or other conduit constructed for the conveyance of water, or other opening through or across a public highway or street, which are used principally for power purposes, to restore such highway to passable condition, and to build, rebuild, maintain and keep in repair at such proprietor's or owner's expense, a good and sufficient bridge or viaduct over and across the same, of the size and kind required by law of the highway authorities in charge of such highway or bridge." [Emphasis supplied.]

Section 1 of the 1921 act, ch. 87, L. 1921, requires the owner of any canal, ditch or other conduit which is "constructed for the conveyance of water used principally for irrigation purposes" to provide all necessary bridges and viaducts for the use of the public in crossing the same, and provides for their maintenance after construction. Section 2 applies to the owner of 1) any canal, 2) ditch or other conduit constructed for the conveyance of water, or 3) other opening through or across a public highway or street, to restore the highway to passable condition, and build or rebuild at the owner's expense a suitable bridge or viaduct. The phrase "which are used principally for power purposes" follows the series of items to which it applies, i.e., canal, ditch or other conduit constructed for the conveyance of water, or other opening through or across a public highway or street, and the question is raised whether the phrase modifies only the last item in the series, "other opening," or whether it applies to the entire series. In my judgment, the phrase applies to all items in the series. The series begins with specific items, canal, ditch, and conduit, and concludes with a general phrase, "or other opening." It is a strained construction of the sentence, in my judgment, to construe the phrase "which are used principally for power purposes" as applying to the most general and inclusive item in the series, "other openings," and as not applicable to the specific items preceding it, such as canal and ditch. It is difficult to infer any valid legislative purpose in bringing within the scope of the statute "other openings" which are used principally for power purposes, but excluding ditches, canals and other conduits which are used for the same purpose.

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It is for this reason that I cannot concur in your interpretation of this provision. I agree that it is not entirely free from ambiguity, but I believe the far more persuasive construction of the provision to be as indicated above, that it applies to canals, ditches or other conduits and other openings through or across a public highway or street, only when such canals, ditches or other conduits or other openings are used principally for power purposes.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj