



STATE OF KANSAS

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Curt T. Schneider
Attorney General

November 16, 1977

ATTORNEY GENERAL OPINION NO. 77-361

Mr. Jerry D. Fairbanks
Whalen, McGinley & Fairbanks
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Sharon Springs, Kansas 67758

Re: Townships--Prairie Dogs--Eradication

Synopsis: The second paragraph of K.S.A. 80-1202 applies only to those counties falling within the class of counties identified in the initial language of the proviso found in the first paragraph thereof and added by amendment in 1968. Thus, assessment for prairie dog eradication costs under this section is not authorized for townships in Wallace County.

* * *

Dear Mr. Fairbanks:

You inquire whether K.S.A. 80-1202 authorizes the township trustees in Wallace County to assess the cost of eradication of prairie dogs against the owners of lands infested therewith and on which eradication work is deemed necessary. The question arises in view of the proviso in the first paragraph, which is applicable only to certain counties which do not include Wallace.

Prior to amendment in 1969, this provision stated thus:

"In addition to the duties now prescribed by law for township trustees, in counties infested by prairie dogs, they may do and perform the following services: That the

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township trustees of the several townships in this state infested by prairie dogs may enter upon the lands so infested in their respective townships and make diligent efforts to exterminate all prairie dogs thereon. For the purpose of enabling them to carry into effect the provisions of this act, the trustees are authorized and empowered to employ all such assistance and to purchase the poison or such appliances and material as they deem necessary to exterminate such dogs. The work of such extermination shall all be done under the supervision and direction of the trustees."

In 1969, this section was amended. See ch. 472, L. 1969. The amendment consists of a proviso added to the first paragraph, and an entire second paragraph, together stating thus:

"Provided, That in any county having a population of more than four thousand six hundred (4,600) and less than five thousand two hundred (5,200) which contains no city of the second class and not more than two (2) cities of the third class, the trustees shall before entering upon the lands give written notice to any landowner who shall fail or refuse to make use of the materials offered or provided, that unless he endeavors to control such prairie dogs according to the methods prescribed by the board of trustees will, within fifteen (15) days after the date specified in the notice enter upon his land and use the necessary materials to eradicate the prairie dogs thereon; and the trustees or their agents, may thereafter enter upon the land and proceed to eradicate such prairie dogs.

After eradication of such prairie dogs, the trustees shall immediately notify the landowner or landowners with an itemized statement of the costs thereof, and stating that unless such amount is paid within thirty (30) days from the date of the notice, that the amount shall become a lien upon their real estate. If such costs are not paid within thirty (30) days they shall be assessed

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against the property of the landowner and the township clerk shall, at the time of certifying other township taxes to the county clerk, certify the costs of such eradication and the county clerk shall extend the same on the tax roll of the township against such property and said costs shall be collected by the county treasurer and paid to the township as other township taxes are collected and paid."

In my judgment, the last paragraph should be construed to apply to only those counties which fall within the class of counties which are affected by the first paragraph of the 1969 amendment. Ch. 472, L. 1969, indicates that the second paragraph of K.S.A. 80-1202 was in fact enacted as the second paragraph of the proviso itself. For reasons which are doubtless obscure, the 1969 legislature chose to limit the proviso to a very restrictive class of counties, and indeed, perhaps to only one county. The first paragraph of the 1969 amendment permits the trustees in that county to enter upon land and eradicate prairie dogs after first giving notice to and affording the landowner fifteen days in which to control prairie dogs on the affected property. Under the language preexisting in 1969, trustees already enjoyed the right to enter upon property and eradicate prairie dogs. However, the language prior to 1969 did not provide for prior notice to the landowner or for assessment of eradication costs. In my judgment, the 1969 legislature intended to authorize the assessment of eradication costs only against landowners to whom fifteen days notice had been given and who had failed in that period to control prairie dogs on their property voluntarily.

Thus, in my opinion, K.S.A. 80-1202 does not authorize the township to assess eradication costs against the landowner pursuant to the second paragraph thereof, in any county other than those falling within the class of counties identified in the initial language of the proviso added by the 1969 amendment.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj