



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

December 13, 1977

ATTORNEY GENERAL OPINION NO. 77- 385

Mr. Melvin M. Gradert  
Harvey County Administrator  
Harvey County Courthouse  
Newton, Kansas 67114

Re: Counties--Roads--Improvements

Synopsis: A county may provide for gravelling and grading of a road dedicated to public use by a plat filed respecting land which lies outside the limits of an incorporated city.

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Dear Mr. Gradert:

We have your letter of December 6, 1977, enclosing a copy of a plat of a rural area of Harvey County, Kansas, on which the platted area is outlined in red and a street designated thereon indicated by red hash marks.

You advise that the board of county commissioners has been petitioned by the owners in the platted area to pay the cost of maintaining the street, which maintenance at the present time would consist of grading and gravelling the street. As a result, the question has arisen what responsibility, if any, the county has pursuant to K.S.A. 68-728 regarding this street, dedicated by plat in a rural area, outside an incorporated city.

K.S.A. 68-728 prescribes a procedure whereby, whenever any land shall be platted and laid off into lots and blocks within any county and outside the limits of any incorporated city, and the owners of a sufficient portion thereof file a petition with the board of county commissioners,

Mr. Melvin M. Gradert  
Page Two  
December 13, 1977

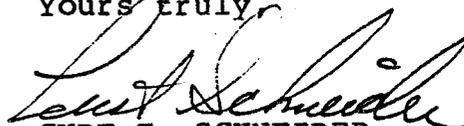
"the board . . . shall have the power to provide for the construction or reconstruction of the curbing, guttering, paving, macadamizing of [sic] grading, including drainage, of any public road outside of the limits of any incorporated city whenever it shall deem the same necessary . . . ."

and may assess the costs therefor as provided in the section. The question of the responsibility of the county to furnish the requested maintenance or improvement has been raised, because the street appears to be merely a private street, serving only those owners who live thereon.

K.S.A. 12-401 *et seq.* provides for the filing of plats of any proposed city of the second or third class, or of any town or of any proposed addition to any such city or town. The filing of the plat constitutes a conveyance of fee title to the county of any streets, roads, alleys and the like intended for public use. K.S.A. 12-406. Although I can find no case dealing directly with the specific question, I find little reason to conclude other than that when the platted area is not subsequently incorporated as a town or city, or annexed as an addition to an existing town or city, that the filing of the plat has nonetheless operated as a conveyance of title to the streets and roads designated thereon to the county, dedicated to the public use.

Viewed solely as a matter of law, it appears that title to the street in question has vested in the county, and thus, as a publicly owned road, the county may, if it deems it appropriate, provide the requested gravel and grading. As you indicate, the petitioners do not seek the improvements enumerated in K.S.A. 68-728, such as macadamizing, curbing, guttering or paving. Hence, the procedures for cost assessment prescribed in this section appear not to be applicable. However, if the board deems it appropriate, it may provide, as a general expenditure from the road and bridge fund of the county, for the grading and graveling which is requested. Decisions as to the maintenance of county roads, and streets and roads title to which is vested in the county and not under the control of an incorporated city, necessarily rests with the sound discretion of the board.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj