



STATE OF KANSAS

## Office of the Attorney General

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

Curt T. Schneider  
Attorney General

January 4, 1978

ATTORNEY GENERAL OPINION NO. 78-17

Mr. Roy Ensz  
Township Trustee  
Rural Route 2  
Inman, Kansas 67546

Re: Roads and Bridges--County and Township Roads--Maintenance  
of Township Roads on County Lines

Synopsis: (1) Township board is empowered to maintain and/or  
improve township road which separates adjacent counties,  
provided such work is completed pursuant to plans,  
specifications and regulations of the county engineer.

(2) Boards of county commissioners are not required  
by law to provide for the defense of township boards  
who are sued in a court of law.

\* \* \*

Dear Mr. Ensz:

You advise that the Little Valley Township (McPherson County) board of highway commissioners is experiencing difficulties with the drainage of certain waters resulting from heavy rains insofar as the maintenance of township roads is concerned. You request in behalf of the township the opinion of this office whether a township board of highway commissioners is authorized by law to improve and maintain a drainage ditch running within a township road right-of-way and parallel to an existing township road.

We understand the specific ditch in question falls within Little Valley Township although the road follows at once both the boundary

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line between McPherson and Reno County and the boundary line between your township and that lying immediately to the South. Both townships share concurrent jurisdiction over the maintenance of this particular township road.

Township boards of highway commissioners are charged pursuant to K.S.A. 68-526:

"In all counties not operating under the county road unit system the township board shall have the general charge and supervision of all township roads and township culverts in their respective townships, and shall procure machinery, implements, tools, drain tile, stone, gravel, and any other material or equipment required, for the construction or repair thereof: *Provided*, That all work shall be done in accordance with plans and specifications and the general regulations to be prepared and furnished by the county engineer. No materials shall be purchased and no contract shall be let for the construction or repair of any township road or township culvert, or part thereof in excess of the amount of one thousand dollars (\$1,000), nor shall any machinery or other appliance or equipment to be used in highway construction costing more than one thousand dollars (\$1,000) be purchased by the township board without the approval of the county engineer."

Also important to note is K.S.A. 68-527 which in pertinent part provides:

"That where any township or county road is located as by law provided, upon the dividing line between two townships or two counties, it shall be the duty of the township boards of highway commissioners, or the boards of county commissioners of the townships or counties between which such road may be located to maintain, repair or improve said road between the two townships or counties, and it

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shall be the duty of the township boards or boards of county commissioners to supervise and provide for the maintenance, repair and improving of such roads[.] And provided further, That in case a road is located on the dividing line of two counties and is a county road, then it shall be the duty of the adjoining counties to repair, maintain and improve said road as above provided, but if the road be a township road, then it shall be the duty of the adjoining townships to repair, maintain and improve such road."  
[Latter emphasis added.]

As is clear from these statutes the township board of highway commissioners in the instant case has the duty to repair, maintain and improve the road and that the county engineer must provide the plans, specifications and regulations governing such work. The statutes' provisions do not specifically mention the maintenance of drainage ditches. However, it would appear reasonable to conclude that the general duty of maintaining the township's roads impliedly authorizes the maintenance of drainage ditches to the extent they insure the continued use of such roads. For as the Kansas Supreme Court has stated, where a township road is a public road ". . . the maintenance and repair of it rests in the sound discretion of the township board . . ." Pratt v. Fall River Township Board, 155 Kan. 442, 125 P.2d 357 (1942).

Accordingly it is my opinion that township boards of highway commissioners may lawfully maintain, repair or improve drainage ditches running within township road right-of-ways and parallel to such roads provided the work is done in furtherance of their duty to provide for township roads, and in compliance with the plans, specifications and regulations of the county engineer.

Your attention is also directed to the provisions of K.S.A. 68-547 which in part states:

"That it shall be unlawful for any person or persons to obstruct any public highway in any manner . . . or in any manner to obstruct any ditch on the side of any such highway and thereby damage the same, to dump trash, debris, sewage, or any other material,

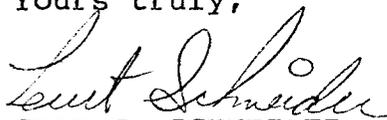
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on any highway or any ditch on the side of any highway . . . ; and any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction before any court of competent jurisdiction shall be fined for each and every offense under this act in the sum of not more than fifty dollars (\$50), with the costs of suit."  
[Emphasis added.]

Should you find that the particular ditch in question has been obstructed it may be that you will want to contact the county attorney for further assistance to correct the matter pursuant to the above statute.

You also inquire whether a board of county commissioners is required by law to provide a defense for the township board when it is sued in a court of law. I find no such requirement in the Kansas statutes.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JPS:kj

cc: The Honorable LeRoy F. Fry  
State Representative  
3rd Floor - State Capitol Building  
Topeka, Kansas 66612