



STATE OF KANSAS

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October 4, 1979

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ATTORNEY GENERAL OPINION NO. 79- 222

Mr. David Heger  
Miami County Attorney  
Box 245  
Paola, Kansas 66071

Re: Roads and Bridges--Repair and Maintenance of  
Bridges--Bridge Within City Limits

Synopsis: The board of county commissioners has no duty  
to repair or maintain a bridge situated wholly  
within the limits of a city in the county.

\* \* \*

Dear Mr. Heger:

You have asked for the opinion of this office concerning the duty of Miami County to maintain a bridge crossing the Marais des Cygnes River located within the corporate limits of Osawatomie, Kansas. You advise that the bridge has been maintained by the county, even though the city has annexed the area in which the bridge is situated. You also advise that the Miami County Board of County Commissioners has determined it is no longer economically feasible to expend county funds for repair and maintenance of the bridge, particularly since a bridge constructed by the State of Kansas on U. S. Highway 169 also serves the community.

Further, you state that you have found no statute imposing a duty on a county to maintain bridges located within the territories of cities in such county. Accordingly, you have advised the board that the bridge is the city's responsibility and that the county may refuse any further repairs or maintenance of the

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structure. For reasons discussed below, we conclude that your advice is correct and that the county has no duty to maintain the bridge in question.

K.S.A. 1978 Supp. 68-1104 provides that boards of county commissioners "shall construct, reconstruct, repair and maintain all county bridges and county culverts located on county roads," but we have found no statute which imposes a duty on the county to maintain bridges in cities. However, we find that the Kansas Supreme Court has, on more than one occasion, addressed similar questions holding in each instance that the board of county commissioners has no duty to repair or maintain a bridge situated wholly within the limits of a city.

In City of Cottonwood Falls v. Chase County, 113 Kan. 164 (1923), the plaintiff-city sought to compel the county to pay for the paving of a bridge across the Cottonwood River. The bridge was located within the plaintiff's territorial limits. The city contended that the county's duty was imposed by an act of the legislature which provided that

"all bridges or culverts built . . . at county expense, or for which the county has granted aid, shall be known as 'county bridges' or 'county culverts,' and shall be maintained thereafter under the direction of the county board and the county engineer at county expense." L. 1917, ch. 80, §7 (as amended, K.S.A. 68-1107).

The city argued that since the county had "granted aid" for construction of a concrete bridge to replace the original iron bridge, the county should be liable for its continued maintenance under the above-quoted provision. The Supreme Court disagreed. The Court determined that the above-quoted section,

"while designating 'all bridges . . . built . . . at county expense, or for which the county has granted aid,' undoubtedly refers to bridges outside of or beyond the control of the cities. It was not the legislative intent to make the counties liable for the maintenance of bridges lying wholly within the limits of an incorporated city."  
113 Kan. at 167.

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In making that determination, the Court affirmed its earlier statements of the rule concerning responsibility for repair and maintenance of bridges in cities. The Court cited Commissioners of Shawnee County v. City of Topeka, 39 Kan. 197 (1888), in which the rule was stated thus:

"[A]ll bridges in the county are to be under the control of the county commissioners, and built and maintained at the expense of the county, except those bridges only that are within the limits and form a part of the streets of certain cities; they are to be repaired and maintained by the cities within whose limits they are situated." Id. at 202-203. (Emphasis added.)

Accord, The State v. Franklin Co., 84 Kan. 404, 405 (1911); City of Rosedale v. Golding, 55 Kan. 167, 172 (1895); City of Eudora v. Miller, 30 Kan. 494 (1883).

The city's duty to maintain the bridge in question commenced upon its annexation of the territory in which the bridge is located. As a general rule:

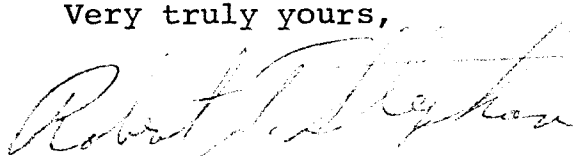
"All public highways in annexed territory become, without any action on the part of the municipal authorities, streets of the municipality, and it assumes the same duties and liabilities as to them as rests upon it in reference to the public ways of its original territory. Thus when a municipality annexes territory embracing a county road, the title in fee to such part of the county road vests in the municipality in trust for the public. And on the addition of territory embracing a public highway and a bridge over a stream the municipal authorities acquire at once the right to exercise jurisdiction over the bridge and are chargeable with the duty of keeping it in repair. On change of municipal limits the control over highways passes by virtue of law from one political subdivision of the state to the other accordingly as the highways are in the one or the other. Thus where corporate limits are extended to embrace territory in which there is a public highway formerly under the jurisdiction of a county, its control passes to the municipal corporation." 2 McQuillin, Municipal Corporations, §7.46. (Emphasis added.)

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Accord, McGrew v. Stewart, 51 Kan. 185, 188-191 (1893).

In consideration of the foregoing authorities, it is our opinion that the board of county commissioners owes no duty to repair and maintain the bridge about which you have inquired. The city has sole responsibility for maintenance of bridges wholly within its territorial jurisdiction.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Steven Carr  
Assistant Attorney General

RTS:WRA:SC:gk