



STATE OF KANSAS

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December 13, 1979

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ATTORNEY GENERAL OPINION NO. 79-293

Mr. James W. Pattinson
Assistant County Counselor
Sedgwick County Courthouse
Wichita, Kansas 67203

Re: Roads and Bridges--County and Township Roads

Synopsis: When a road is admitted into the county road system pursuant to K.S.A. 1978 Supp. 68-506, the board of county commissioners may classify it as a "township road," leaving the township responsible for its repair and maintenance. Once such a classification is made, however, the only power left to the county with respect to the upkeep of such roads is that held by the county engineer. While additional work may be required before a road in a platted addition, subdivision or other platted area is admitted to the county system, roads through non-platted areas may be admitted and assigned as township roads as well, though without the extra work being done.

* * *

Dear Mr. Pattinson:

On behalf of the Sedgwick County Counselor, you request our opinion concerning the authority of the board of county commissioners and county engineer to establish and enforce minimum standards and specifications for roads in unincorporated areas of the county. Additionally, you ask whether, under K.S.A. 68-571, the board of county commissioners may properly assign roads in unplatted areas to townships for maintenance.

Mr. James W. Pattinson
Page Two
December 13, 1979

The authority of the county commission to classify county roads is set out in K.S.A. 1978 Supp. 68-506, which provides in pertinent part:

"In counties which have not adopted the county unit road system, it shall be the duty of the boards of county commissioners with the approval of the county engineers in their respective counties, to classify and designate the roads as 'county primary roads,' 'secondary road system roads,' and 'township or local service roads.'

"The 'county primary roads' shall be the main traveled highways, and shall connect as nearly as possible the cities and principal market centers of each county with each other, and with state highways, as well as connect with county roads in adjoining counties.

"'Secondary road system roads' shall be the roads designated in each county for inclusion in the secondary road system in accordance with the provisions of article 17 of chapter 68 of the Kansas Statutes Annotated, and acts amendatory thereof or supplemental thereto.

"Other public highways shall be 'township or local service roads.'" (Emphasis added.)

While the above allows the board to place the responsibility for upkeep of certain roads on townships, it should be noted that this section, in and of itself, vests no authority in the board to establish standards and specifications which a township board must meet in the maintenance of such roads. Rather, that is left up to the county engineer, as provided by K.S.A. 1978 Supp. 68-502. In relevant part, that statute provides:

"It shall be the duty of the county engineer, in conformity with the regulations and requirements of the secretary of transportation to:

. . . .

"(3) visit and inspect the highways and culverts in each township of his or her county or district which have been reported as unsafe or in need of repair, and advise and direct the township board and the road overseer of each township as to the

Mr. James W. Pattinson
Page Three
December 13, 1979

best methods of construction, repair, maintenance and improvement of such highways and culverts;

"(4) prepare plans, specifications and general regulations governing the construction and maintenance of township roads and culverts, and upon request furnish copies of the same to the township board and to the road overseer of the several townships of his or her county or district;" (Emphasis added.)

From the above, it is clear that the county engineer has the power to prescribe the procedures to be used by township boards in the county in the maintenance of township roads. However, the day-to-day upkeep is reserved to the individual township (K.S.A. 1978 Supp. 68-530), with the county engineer's authority restricted to those cases in which the road has actually been "reported as unsafe or in need of repair." At the same time, the county commission itself is granted neither of these powers, and our research has found no other statutory provision which does so. Therefore, it is our opinion that Kansas statutes empower only the county engineer to so act.

Your second inquiry deals with the question of whether a county may assign roads in unplatted areas to a township for maintenance by the latter. At the outset, we assume that you are referring to public, as opposed to private, roads. This distinction, while seemingly elementary, is important in light of K.S.A. 1978 Supp. 68-506, which authorizes counties to classify a highway as a township road, provided that it is public. If private, the cost and responsibility of maintenance would fall upon the owner, and that would be the end of the inquiry.

Assuming, then, that the road is a public one, in our opinion it is of no importance whether the area in which it lies has been platted. The statute which is of concern to you, K.S.A. 68-571, in part states:

"In any county having a population of 140,000 or more the board of county commissioners may, before accepting into the county road system as county or township road or roads, require that the road, roads, streets, avenues and alleys of any platted addition, subdivision or other platted area laid out or subdivided in such county outside of the limits of

Mr. James W. Pattinson
Page Four
December 13, 1979

any city, after the taking effect of this act, be, by the owner, owners or promoters or others interested therein, dedicated to the public, and laid out, graded and snaded or hard-surfaced to meet the requirements of the county engineer as in this act provided. That for the guidance and assistance to the owner, owners or promoters of such platted addition, subdivision or platted area, the county engineer of such county shall prepare and file in the office of the county clerk, plans and specifications as to construction, grading and surfacing requirements necessary for such road, roads, streets, avenues and alleys." (Emphasis added.)

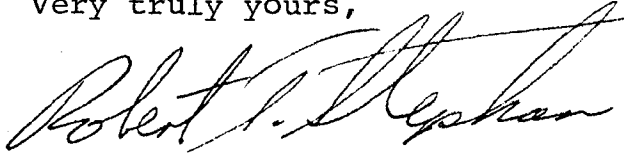
This statute would appear to have the effect of imposing an additional requirement on certain types of roads, rather than limiting a county's power to accept roads to only those traversing platted areas. Therefore, the Board of County Commissioners has the authority to require that some roads (i.e., through any "platted addition, subdivision or other platted area") be brought up to certain standards before they are admitted to the county road system and thereby assigned to the county or to a township for maintenance. While roads through areas not contemplated by K.S.A. 68-571 may not be so regulated, they may still, once dedicated to the public, be classified as township roads pursuant to K.S.A. 1978 Supp. 68-506. Accordingly, even if it is in a non-platted area, a road may, if public, be made the responsibility of a township to maintain. The county engineer's limited control thereafter is discussed herein above.

In conclusion, when a road is admitted into the county road system pursuant to K.S.A. 1978 Supp. 68-506, the board of county commissioners may classify it as a "township road," leaving the township responsible for its repair and maintenance. Once such a classification is made, however, the only power left to the county with respect to the upkeep of such roads is that held by the county engineer. While additional work may be required before a road in a platted addition, subdivision

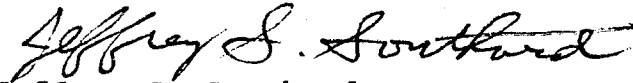
Mr. James W. Pattinson
Page Five
December 13, 1979

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Very truly yours,



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Attorney General of Kansas



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RTS:BJs:JSS:gk