



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 1, 1980

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 80-98

The Honorable Jan Meyers
State Senator, 8th District
8408 W. 90th
Overland Park, Kansas 66212

Re: Cities and Municipalities--Governmental Organization--Consolidation of County Engineer's office and duties with those of County Road Supervisor

Synopsis: A county commission may, pursuant to K.S.A. 12-3901 et seq., consolidate the position of county engineer, created by K.S.A. 1979 Supp. 68-501 et seq., with a county-created position of road supervisor. However, the county may not, through such consolidation, relieve itself of duties imposed by law. Cited herein: K.S.A. 12-3901 et seq., 12-3903, K.S.A. 1979 Supp. 19-101a, 68-501 et seq., 68-502.

* * *

Dear Senator Meyers:

You have requested the opinion of this office concerning 1980 House Bill No. 2299, which provides for the appointment of a county road supervisor in those counties where the county commission determines that the employment of a county engineer is not warranted. You wish to know whether the measure is necessary in view of existing statutes which may give a county the power to do so already.

It is our conclusion that the power given to counties by House Bill No. 2299 is already possessed by them under K.S.A. 12-3901 et seq. These statutes allow counties to consolidate offices and agencies into one unified entity whenever, in the determination of the governing body

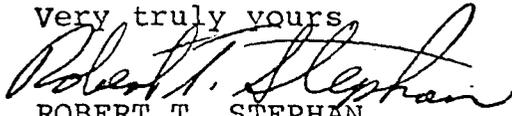
The Honorable Jan Meyers
Page Two
May 1, 1980

(in this case, the county commission), it would be more effective or efficient to do so. Such action may be taken without regard to whether the office is appointive or elective, although a county-wide election would be required in the case of the latter. In addition, it is irrelevant whether statutes establishing the office or offices involved are of uniform application, as the power to consolidate is granted specifically by the Legislature.

As a result, it is our opinion that a county desiring to employ a road supervisor in lieu of a county engineer could establish the new position under its home rule powers, then by a separate resolution (passed by virtue of K.S.A. 12-3903), consolidate the two positions and thereby eliminate the latter office. However, it should be noted that if the road supervisor were not a licensed professional engineer, the performance of a number of different functions would have to be done by consultants hired under contract, or, alternatively, by someone on the supervisor's staff who is so qualified. K.S.A. 12-3905 does not allow a county to relieve itself of obligations imposed by law. In addition, as K.S.A. 1979 Supp. 68-502 is uniform in application, a county could not employ its home rule powers to charter out from the requirement. K.S.A. 1979 Supp. 19-101a. House Bill No. 2299 would appear by its terms to recognize this limitation, in that Section 2 expressly prohibits a road supervisor from performing duties required by law to be performed by a licensed professional engineer.

In conclusion, a county commission may, pursuant to K.S.A. 12-3901 et seq., consolidate the position of county engineer, created by K.S.A. 1979 Supp. 68-501 et seq., with a county-created position of road supervisor. However, the county may not, through such consolidation, relieve itself of duties imposed by law. It is accordingly our opinion that House Bill No. 2299 adds nothing to the powers already possessed by counties with regard to the appointment of a road supervisor to act in place of the county engineer.

Very truly yours,



ROBERT T. STEPHAN

Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:phf