



STATE OF KANSAS

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November 14, 1980

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ATTORNEY GENERAL OPINION NO. 80- 248

Mr. Thomas Sullivan
Phillips County Attorney
Phillipsburg, Kansas 67661

Re: Personal and Real Property--Land Surveys--Review by
County Surveyor or Engineer Before Recordation

Synopsis: A subdivision or survey plat prepared by a registered
land surveyor on behalf of the landowner may not be
recorded in the office of the register of deeds unless
first reviewed as required by K.S.A. 58-2005.

Where a county does not have a county surveyor or county
engineer to perform the review as required by K.S.A.
58-2005, the board of county commissioners may contract
with either a licensed professional engineer or a
"practical and competent" surveyor to perform the
review in compliance with K.S.A. 58-2005.

The county's costs incurred for the review of subdivision
and survey plats as required by K.S.A. 58-2005 are
"charges and expenses" within the meaning of K.S.A. 1979
Supp. 19-241, and should be paid out of the county general
fund. Cited herein: K.S.A. 12-3903, 12-3907, K.S.A.
1979 Supp. 19-101a, as amended by L. 1980, chs. 84, 85,
19-241, 19-1401, K.S.A. 58-2001, 58-2005, K.S.A. 1979
Supp. 68-501, 68-502.

* * *

Dear Mr. Sullivan:

You advise that Phillips County does not have a county surveyor or
a county engineer or the funds available for establishing these

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offices. As a result, the provision of K.S.A. 58-2005 which requires that subdivision and survey plats be reviewed by either a county surveyor or county engineer before they can be recorded by the register of deeds has not been fulfilled, and the Phillips County Register of Deeds refuses to file any such plats. You further advise that the board of county commissioners has found a qualified engineer who could be appointed to perform only the review function and who would charge on a "per plat" basis. This engineer is the same person with whom the board has contracted to carry out the statutorily required duties of the county engineer as prescribed in K.S.A. 1979 Supp. 68-502 and other sections. You further advise that the board wants to be reimbursed for the cost of the engineer's services and proposes to do so by imposing a fee on the plats which require his review.

In this context, you ask several questions. You first inquire whether a plat prepared by a registered land surveyor on behalf of the landowner may be recorded in the office of register of deeds without the statutorily required review, where the county does not have either a county surveyor or county engineer.

The language of K.S.A. 58-2005 is specific and mandatory. The law requires that all subdivision plats or plats of a survey be reviewed by a county surveyor or county engineer before they can be recorded. K.S.A. 58-2005 states in pertinent part:

"Before a subdivision plat or plat of survey can be recorded, it shall be reviewed by the county surveyor or in the absence of the county surveyor, the county engineer shall be responsible for the enforcement of this act, and shall certify that such plat meets all the requirements of this act." (Emphasis added.)

As is evident from the language of the statute, the purpose of the review is to assure that all the requirements of the provisions of K.S.A. 58-2001 et seq. are enforced. These provisions require the monumentation of corner boundaries of subdivisions and the recording of reference measurements for plats, and further require that certain information be submitted along with the plats. The person who reviews the plats is held responsible for assuring that the plats meet all the requirements of the act, and to enforce the act. In light of this statutory responsibility, it is our opinion that the person who performs the review should be responsible to and derive his or her authority from the county, not from the person who hired him or her to prepare the plat. Furthermore, since this procedure is specifically

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labeled a review, it would not be appropriate, in our judgment, to have the land surveyor who prepared the plat for the landowner certify its compliance with the provisions of the act. We conclude that a plat prepared by a registered land surveyor may not be recorded unless first reviewed as required by K.S.A. 58-2005.

The above-stated conclusion does not necessarily mean that a county which does not have either a county surveyor or county engineer would have to establish one of those positions in order to have plats properly recorded. Your second question anticipated this alternative when you asked whether the board of county commissioners could appoint a qualified person for the purpose of reviewing plats and thereby satisfy the requirements of K.S.A. 58-2005. In our opinion, the board of county commissioners may contract with a qualified individual to perform the review of plats in compliance with K.S.A. 58-2005.

In Attorney General Opinion No. 80-98 (copy enclosed), we noted that a county may pass a resolution by authority of K.S.A. 12-3903 and consolidate two offices into one office. This consolidated office would then become "the successor in every way to the powers, duties and functions . . . imposed upon the offices or agencies so consolidated." K.S.A. 12-3907. As a result of the consolidation, a county could then eliminate one of the offices. However, as we cautioned in Opinion No. 80-98, a county may not relieve itself of obligations imposed by law in effecting such consolidations, and that if a person who holds the consolidated office does not meet the statutory requirements for one of the offices, the performance of functions specifically required of that office by statute would have to be done by qualified consultants or individuals hired by the county commissioners.

You advise that Phillips County has already consolidated the office of road supervisor with the office of county engineer and thereby eliminated the latter office. However, the current road supervisor is not a licensed professional engineer and for that reason the board of county commissioners contracts with a licensed professional engineer to perform a county engineer's statutory duties. Thus, for the reasons expressed in Attorney General Opinion No. 80-98, it is our opinion that the Phillips County Commissioners may also contract with a qualified person to review plats to satisfy the requirements of K.S.A. 58-2005.

What qualifications must such person have in order to review said plats? To be qualified to review plats in accordance with the statute in question, it is necessary that such person meet the statutory qual-

ifications established for either a county surveyor or county engineer, since those are the only two officers who may perform the review of plats under the statute. The eligibility requirements for a county surveyor are set forth in K.S.A. 1979 Supp. 19-1401 which states, in pertinent part: "No person shall be eligible to hold the office of county surveyor who is not a practical and competent surveyor." K.S.A. 1979 Supp. 68-501 establishes the qualifications for a county engineer and requires that such officer be a "licensed professional engineer." Accordingly, the individual with whom the county contracts to review plats in accordance with K.S.A. 58-2005 must be either a "practical and competent surveyor" or a "licensed professional engineer."

The third question you have raised is whether the board of county commissioners, pursuant to its home rule powers, may impose a fee to offset the county's costs of complying with K.S.A. 58-2005. In our opinion, it may not. K.S.A. 1979 Supp. 19-241 provides, in pertinent part:

"It shall be the duty of the board of county commissioners of each county in this state to levy in each year, in addition to the taxes for other purposes, a county tax sufficient to defray all county charges and expenses incurred during such year. . . ."
(Emphasis added.)

In State, ex rel., v. Commissioners of Marion County, 21 Kan. 419 (1879), the Kansas Supreme Court construed the phrase "county charges and expenses" to mean "such charges and expenses as are incidental in conducting the business of the county government for the current year." 21 Kan. at 434. (Emphasis added.) In our judgment, the county's costs incurred for the review of subdivision and survey plats as required by K.S.A. 58-2005 are "charges and expenses" within the meaning of K.S.A. 1979 Supp. 19-241, and should, therefore, be paid out of the county general fund.

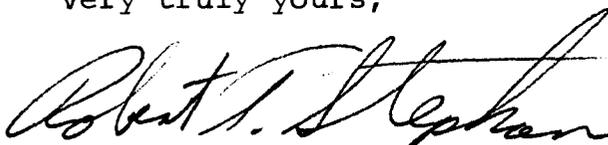
In County Board of Education v. Austin, 276 S.W. 2 (1925), the Supreme Court of Arkansas defined the county general fund as "a fund raised to meet the expenses incident to county government." 276 S.W. at 5. The Supreme Court of North Carolina characterized the county general fund as that fund established for payment of "general expenses recurring regularly in the ordinary course of and as necessary steps in the orderly operation of county government." Southern Ry. Co. v. Cherokee County, 10 S.E.2d 607 (1940). Guided

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by these definitions, we conclude that the county's expenses incurred for the review of subdivision and survey plats pursuant to K.S.A. 58-2005 should be paid out of the county general fund. The review of the plats is a regularly recurring county function, the responsibility for which is vested in a county officer or employee. The statutory duty vested in the county as prescribed by 58-2005 is no less a part of the business of the county than those functions performed by the offices of the county clerk, the register of deeds, or the sheriff whose general operations and expenses are paid out of the county general fund.

In summary, we conclude that a subdivision or survey plat prepared by a registered land surveyor may not be recorded unless first reviewed as required by K.S.A. 58-2005. Secondly, where a county does not have a county surveyor or county engineer to perform the review as required by K.S.A. 58-2005, the board of county commissioners may contract with either a licensed professional engineer or a "practical and competent" surveyor to perform the review in compliance with K.S.A. 58-2005. Finally, we conclude that the county's costs incurred for the review of subdivision and survey plats as required by K.S.A. 58-2005 are "charges and expenses" within the meaning of K.S.A. 1979 Supp. 19-241, and should be paid out of the county general fund.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:BJS:SC:phf