



STATE OF KANSAS

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June 23, 1981

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ATTORNEY GENERAL OPINION NO. 81- 141

Mr. Albert O'Brien
Newbury Township Trustee
R.R. 1, P. O. Box 23A
Paxico, Kansas 66526

Re: Townships -- Duties of Township Officers -- Township Board -- Auditing Board

Synopsis: The duties of the township trustee, township treasurer, and township clerk are set forth in Articles 3, 4, and 5 of Chapter 80, Kansas Statutes Annotated. The three officers must act together as the township board, which is the governing body of the township, in specific instances as directed by numerous statutes in Chapter 80 and K.S.A. 68-523 et seq. To the extent there is conflicting statutory language dealing with the same subject, i.e. duties delegated to an individual officer and also to the township board, the earlier language must be deemed to be impliedly repealed. Cited herein: K.S.A. 1980 Supp. 12-1675, K.S.A. 68-101, 68-523, 68-526, K.S.A. 1980 Supp. 80-104, K.S.A. 80-109, 80-115, 80-301, 80-401, 80-501, 80-808, 80-915, 80-1301, K.S.A. 1980 Supp. 80-1423, K.S.A. 1980 Supp. 80-1502.

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Dear Mr. O'Brien:

As township trustee and on behalf of the officers of Newbury Township, Wabaunsee County, you have requested an opinion defining the duties of township officers as set forth in K.S.A. 80-301 et seq. Articles 3, 4, and 5 of Chapter 80 establish the scope of authority and the duties of each of the individual officers -- township trustee, township treasurer, and township clerk. Numerous statutes throughout Chapters 68 and 80 specify occasions when the three must act in concert as the township board.

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The trustee has been delegated considerable authority under the statute for general care and management of the township and has been referred to by the Kansas Supreme Court as the township's "managing officer." Fisher v. Odell Township, 87 Kan. 687, 691 (1912). The principal duties of the township trustee are defined at K.S.A. 80-301 as follows: To divide the township into road districts and make necessary alterations; to fill vacancies in the office of road overseer; to assure proper application of all moneys belonging to the township for road and other purposes; to have care and management of all property in the township and to superintend the various interests thereof; to have a record made defining the boundaries and number of each road district, alterations made in such districts, and the number of road overseers in each township; to administer all oaths in discharging the duties of the office; to superintend all pecuniary concerns of the township and with the concurrence of the board of county commissioners, levy a tax on the property in the township for road and other purposes and report the same to the county clerk; and to discharge other duties which may be imposed by law. Former Attorneys General have interpreted the duties of township trustee and a copy of one compilation by former Attorney General Vern Miller is attached for your consideration.

The principal duties of the township treasurer are noted at K.S.A. 80-401 et seq. as follows: To receive and take charge of all moneys belonging to the township and to pay out and account for the same upon orders drawn upon him or her by the township trustee; to keep an account in duplicate of all moneys received and the manner in which they have been disbursed, keeping a separate account of each fund and exhibiting such account with vouchers at the annual meeting of the township auditing board, and filing one of the verified duplicates with the county clerk; to deposit all public money in a bank which is a member of the Federal Deposit Insurance Corporation or a savings and loan association which is a member of the Federal Savings and Loan Insurance Corporation, whichever is designated by the township board, or invest such moneys as provided by K.S.A. 1980 Supp. 12-1675; to present a full itemized statement of all receipts and disbursements for the year at the quarterly meeting of the township board; to publish in a newspaper in the county which has a general circulation in such township, a detailed statement of the year's receipts and expenditures; to execute a bond to the state in a sum not less than the maximum amount of money which will probably be received during his or her term of office, with two or more sureties, to be approved by the board of county commissioners and filed in the office of the county clerk.

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The township clerk's duties are set forth at K.S.A. 80-501 et seq. He or she shall have the custody of the records, books and papers and shall file such papers as are by law required to be filed and promptly record the same in his or her office; shall record the report of the township trustee in the township record and post a certified copy at the usual place of holding elections in the township; shall execute a bond to the state for at least \$300, with two or more sureties, to be approved by the chairman of the board of county commissioners and filed in the office of the county clerk.

Certain township functions as established in Chapter 80, Kansas Statutes Annotated, require action by the "township board" acting in concert, i.e., the trustee, treasurer, and clerk must collaborate to act as a unit in performing specific duties. See Johnson v. Reno County Commissioners, 147 Kan. 211, 227 (1938). Such functions are to be performed by the board and no one officer acting alone has the power to substitute his or her own authority for that reserved to the board.

87 C.J.S. Towns §79 states in pertinent part:

"A statute imposing duties on several officials as a body has been held not to impose such duties on the officials individually."

The Kansas statutes expressly provide that certain township functions are reserved for the township board. For example, the board is vested with the authority for acquisition of buildings and sites for township purposes (K.S.A. 80-104), for sale of lands (K.S.A. 80-109 et seq.), for levying taxes for repair and maintenance of a township hall (K.S.A. 80-115), for the issuance of certain licenses (K.S.A. 80-1301 et seq.), for approving the creation of a fire district (K.S.A. 80-1502 et seq.), for establishing and operating an ambulance service (K.S.A. 80-1423 et seq.), for providing funds for the repair and reconstruction of the library building of such township (K.S.A. 80-808), and for acquiring control of cemeteries within the township (K.S.A. 80-915 et seq.).

K.S.A. 68-101 and K.S.A. 68-523 et seq. constitute the duties of the township board of highway commissioners, which is composed of the trustee, treasurer, and clerk, and impose on that body the "general charge and supervision of all township roads and culverts" in counties not operating under the county road unit system (K.S.A. 68-526).

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It is our judgment that, except where authority is limited or restricted by other statutes, or where power is expressly vested in the township board as the governing body, the authority vests in the trustee as the township's "managing officer" to hire and fire township employees who are employed for purposes governed by Chapter 80 and other statutes addressing townships.

At the same time, even though the trustee has the duty of "care and management of all property, real and personal, belonging to his or her township, and to superintend the various interests thereof, (K.S.A. 80-301)" if such property is used in the maintenance and operation of a system or function governed by the board, then decisions to sell or dispose of such township property are for the board to make. With regard to the single employee who works as a grader operator/patrolman in your township and who was presumably hired by the township board, the Kansas Supreme Court has spoken to the question of the authority vested in the board for such employment activities.

"By the act of 1885 (Gen. Stat. 1909, §§9629-9636) the township board constitutes a board of commissioners of highways of which the trustee is the chairman, it being their duty to keep the roads and bridges of their respective townships in repair and improve them as far as practicable. This act authorizes them to employ a general superintendent, let contracts, appoint overseers, employ laborers, etc., but the power to let contracts and purchase tools, machinery or material can only be exercised by the board at an authorized meeting." (Emphasis added.) Fisher v. Odell Township, supra.

Because the legislature has changed the management authority of the township officers over the years, conflicting statutory language may delegate the same or similar duties to an individual officer and to the township board. Under principles of statutory construction, earlier language is impliedly repealed to the extent that it conflicts with later statutory language dealing specifically with the same subject matter. The rule so stated by the Kansas Supreme Court in Arkansas City v. Turner, 116 Kan. 407, 409 (1924) is:

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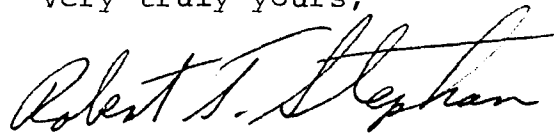
"It is an elementary rule of statutory construction that where a manifest conflict between two statutes cannot be reconciled so as to give reasonable operative effect to both, the later enactment, as the last expression of the legislative will, controls, and the earlier enactment is deemed to have been repealed by implication."

Thus, duties defined in the more recent statutes control in cases of irreconcilable conflict.

Finally, the trustee, treasurer and clerk of each municipal township have been designated the auditing board under K.S.A. 80-302, which is directed to meet on the last Monday of March, June, September, and December each year. At each such quarterly meeting the auditing board is to examine and audit all claims against the township and file its annual report with the county clerk for approval by the board of county commissioners.

We trust that the foregoing general discussion of the duties and responsibilities of the township board and the various township officers will be of assistance.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:hle

Enc.