January 20, 1982

ATTORNEY GENERAL OPINION NO. 82-13

Mr. John Eyer
Washington County Attorney
County Courthouse
Washington, Kansas 66968

Re: Counties and County Officers -- County Surveyor or Engineer -- Costs of Official Survey

Synopsis: A county may not assess the costs incurred in establishing government corners in conducting a legal survey; however, a county may adopt a resolution pursuant to K.S.A. 19-101a which would permit the county to assess the costs incurred in establishing boundaries to the benefitted landowners. Cited herein: K.S.A. 1980 Supp. 19-101a, K.S.A. 19-1423, 19-1427 (repealed).

* * *

Dear Mr. Eyer:

You state that a local property owner has requested that a public survey be made pursuant to K.S.A. 19-1423 in connection with a boundary dispute. Because the Washington County Engineer is not a licensed surveyor, the county will have to hire an independent surveyor to make the survey. You ask whether the county or the benefitted landowners must pay the expense of the survey since K.S.A. 19-1427, which provided that the costs were to be assessed to the landowners, was repealed in 1977.

K.S.A. 19-1423, the statute requiring the survey, provides:

"Whenever the owner, owners or occupants of one or more tracts of land shall desire to permanently establish the corners and boundaries thereof, he or they shall notify the county surveyor to make a survey thereof and establish such corners and boundaries, and shall
As we understand from the provisions of 19-1423 and our re-
search of the cases involving said statute, a legal survey is
the procedure which has been provided by statute to permanently
and officially establish corners and boundaries of property
within the county and, if not appealed within 30 days, is
conclusive proof as to the locations of the corners and bound-
daries in any subsequent court action. See, Frey v. Feeders,
207 Kan. 764 (1971), In re Moore, 173 Kan. 820 (1953), Simpson
v. Goering, 161 Kan. 558 (1946). It has been held that the
public as a whole benefits from a legal survey insofar as it
establishes government corners, but the private landowners
benefit from the establishment of the boundaries of their

In Attorney General Opinion No. 80-248, this office was asked
whether a board of county commissioners, acting pursuant to
home rule powers, could impose a fee to offset the costs of complying with K.S.A. 58-2005 which requires the county surveyor to review subdivision and survey plats. In that opinion, it was concluded that the costs incurred by the county were expenses incidental to conducting the business of county government and should, therefore, be taken from the county general fund in accordance with K.S.A. 1979 [now 1980] Supp. 19-241 and could not be offset by a fee. Applying the foregoing rationale to a public survey, it appears that the costs incurred in establishing government corners are of public benefit and are incidental to conducting the business of county government. Therefore, said costs cannot be assessed to the landowners in the absence of a statute to the contrary.

However, because the establishment of boundary lines and nongovernment corners is of primary benefit to the affected landowners, we think it appropriate to assess the costs thereof to such landowners. Under the provisions of K.S.A. 1980 Supp. 19-101a, a county may utilize home rule powers to transact county business in matters of local legislation and administration, subject to certain enumerated limitations. It appears that the hiring and paying for the services of a surveyor to conduct a legal survey is a matter of local administration. Since there are no uniformly applicable statutes which provide for the payment of such costs, in our opinion, a county may adopt a resolution pursuant to K.S.A. 1980 Supp. 19-101a permitting the county to assess those costs incurred in establishing boundaries to the benefitted landowners.

We note that the Bill Brief prepared by the Legislative Research Department on 1977 Senate Bill No. 58, which accomplished the repeal of K.S.A. 19-1427, states that the Senate committee amended the bill to repeal the entire statute since counties possess the authority to act in this regard under statutory county home rule powers. This information further supports our conclusion.

In conclusion, a county may not assess the costs which pertain to establishing government corners in conducting a legal survey; however, a county may adopt a resolution pursuant to K.S.A. 19-101a which would permit the county to assess the costs incurred in establishing boundaries to the benefitted landowners.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:hle