



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 20, 1982

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

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 es-
tablishing 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 establish-
ing 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19-1427 (repealed).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expense of the survey since K.S.A. 19-1427, which provided that the costs were to be assessed to the landowners, was repealed in 1977.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

furnish him the name and address of all persons residing in the county and elsewhere, so far as known, who may be affected by such survey. The county surveyor shall cause a notice in writing to be served on each person who may be affected by the survey, or their agent or agents residing in said county, stating the time when he will begin the survey, and the lines or corners to be established, which notice shall be delivered to the person or left at his usual place of residence, at least six (6) days prior to the day set for the survey.

"Upon the landowners who may be affected by the survey, and who do not reside in the county, notice may be served by publication in a newspaper published in the county, if there be one, once in each week for three (3) consecutive weeks, the last publication to be made at least three (3) days prior to the day set for beginning the survey, and in case no newspaper is published in the county, or such notice may be served by mailing, by registered mail, postage prepaid, with return receipt requested, addressed to said person at his usual place of residence with proper post-office address. In all cases where all the landowners interested shall consent in writing, the county surveyor may, at such time as may be agreed upon, proceed to establish said corners and boundaries without serving notice as aforesaid. Due proof of service of notice herein provided shall be made and entered of record in the office of the county surveyor."

As we understand from the provisions of 19-1423 and our research 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 boundaries 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 land. Gnadt v. Durr, 208 Kan. 783, 788, 789 (1972).

In Attorney General Opinion No. 80-248, this office was asked whether a board of county commissioners, acting pursuant to

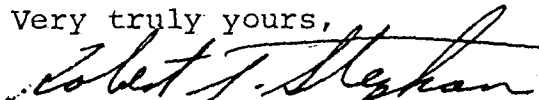
home rule powers, could impose a fee to offset the costs of complying with K.S.A. 58-2005 which requires the county surveyor to review subdivision and survey plats. In that opinion, it was concluded that the costs incurred by the county were expenses incidental to conducting the business of county government 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 non-government 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