



STATE OF KANSAS

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February 5, 1982

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ATTORNEY GENERAL OPINION NO. 82- 27

Mr. John V. Black
Pratt County Counselor
County Courthouse
Pratt, Kansas 67124

Re: Roads and Bridges -- County and Township Roads --
Laying of Pipelines and other Public Utility Uses
of Roadways

Synopsis: Oil and gas pipeline companies and public utility
companies have the authority to construct and main-
tain lines over, upon and under public roads by
virtue of their statutorily-granted powers of eminent
domain. However, such use may not interfere
with the use of the road for highway purposes.
Cited herein: K.S.A. 17-618, K.S.A. 1980 Supp.
17-4604.

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Dear Mr. Black:

You request an opinion regarding whether a board of county
commissioners has the authority to permit the laying or
burying of telephone wires, gas lines along county roads or
otherwise using the roads for public utility purposes. You
ask your question in light of Attorney General Opinion No.
81-242, which concluded that a board of county commissioners
does not have the authority to permit seismographic equipment
(used by oil exploration companies to locate subterranean oil
deposits) to operate on the county roads in which the county
has merely an easement, without permission of the abutting
landowners. That conclusion was based on the rationale that
such a use does not constitute public travel and is, there-
fore, beyond the scope of the easement acquired by the county
in the road.

K.S.A. 17-618 grants the power of eminent domain to certain corporations, including telegraph and telephone corporations and electric and pipeline companies. Other statutes grant specific power to certain utility corporations to construct utility lines along and under public roads. See, e.g., K.S.A. 1980 Supp. 17-4604. Thus, utility companies are permitted to lay or erect their lines along public roadways by virtue of specific statutory authority, and not because such use may be deemed within the scope of "public travel" or by virtue of permission of the county commission. This power is not absolute, as was stated in Mall v. C. & W. Rural Electric Cooperative Ass'n., 168 Kan. 518 (1950), citing State, ex rel. Bartlett v. Weber, 88 Kan. 175, Syl. ¶2, as follows:

"A person may build and maintain such a line on a rural highway without having obtained a franchise or special license from any officer, providing it is done in a way that it will not seriously impede or endanger public travel or unnecessarily interfere with the reasonable use of the highway by other members of the public and there is no invasion of the rights of the owners of abutting lands." (Emphasis omitted.) Id. at 521.

A board of county commissioners would retain the right to invoke the police power to prohibit a utility company from using a county road in a manner which would interfere with the public safety when the public was attempting to use the road for travel, although the board has no authority otherwise to permit or deny a utility company the right to utilize the roadway for utility purposes.

In our opinion, the fact that Kansas permits additional uses of public roads beyond that of public travel in no way invalidates the conclusion reached in Attorney General Opinion No. 81-242. The Kansas Supreme Court also stated in Mall v. C. & W. Rural Electric Cooperative Ass'n., 168 Kan. 518 (1950), as follows:

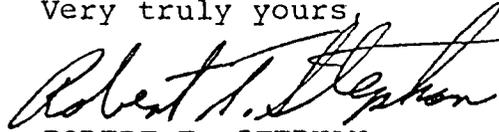
"Under our law there are additional uses of the right of way available to certain public utilities where the use is for the public interest." (Emphasis added.) Id. at 522.

Oil exploration companies do not have eminent domain power, nor may they be deemed to be quasi-public corporations acting for a public purpose. Although the state may ultimately derive some economic benefit from the discovery of additional oil within the state, these companies are pursuing a private purpose for private gain and, therefore, may not be said to be pursuing the same end as public utility corporations.

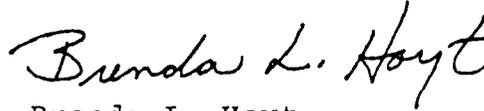
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In conclusion, oil and gas pipeline companies and public utility companies have the authority to construct and maintain lines over, upon and under public roads by virtue of their statutorily-granted powers of eminent domain. However, such use may not interfere with the use of the road for highway purposes.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:hle