



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

September 14, 1982

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ATTORNEY GENERAL OPINION NO. 82- 205

Ivan D. Krug
Attorney at Law
711 Main Street
LaCrosse, Kansas 67548

Re: Roads and Bridges -- County and Township Roads --
Regulation of Traffic by Local Authorities; Law-
suits for Damage Caused by Illegal Acts

Synopsis: In order to prevent damage to roads under its jurisdiction, a county may, pursuant to K.S.A. 8-1912, prohibit the use of, or impose limits upon the weight of vehicles using, such roads during certain periods when weather conditions would cause such use to inflict damage. Such limits become effective upon the passing of a resolution by the board of county commissioners and the posting of signs stating the limits or prohibitions, violations of which can result in a civil action to recover damages. In that any common law right of a county to bring an action for damages caused by negligent use of county roads has been superseded by statute, only acts which are illegal may give rise to a suit for damages. Cited herein: K.S.A. 8-5,123 (repealed L. 1974, ch. 33), 8-1912, 8-1913.

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Dear Mr. Krug:

As Rush County Counselor, you request the opinion of this office on a question involving the use of county roads by large vehicles. Specifically, you inquire whether the use of county roads by such vehicles may be limited or prohibited, during periods of rainy or snowy weather, in that they cause significant damage in the form of ruts and pot-holes. You also inquire as to the liability of the owners or operators of such vehicles in the event damage occurs.

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It is clear from Kansas statutory and case law that the use of public roads may be regulated by local governments. The current legislative pronouncement on this subject is found at K.S.A. 8-1912, which states in pertinent part [at subsection (a)]:

"Local authorities with respect to highways under their jurisdiction may prohibit, by ordinance or resolution, the operation of vehicles upon any such highway or impose restrictions as to the weight of vehicles to be operated upon any such highway, for a total period of not to exceed ninety (90) days in any one (1) calendar year, whenever any said highway by reason of deterioration, rain, snow or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced." (Emphasis added.)

It may be noted that, in its original form (K.S.A. 8-5,123), the statute provided only for the regulation and not the prohibition of vehicular traffic, a fact which led to the striking down of at least one local attempt at prohibition. Ash v. Gibson, 146 Kan. 756 (1937). However, such deficiencies were remedied in 1955, when local authorities were given the express power to prohibit certain types of traffic altogether on designated highways (L. 1955, ch. 59, §1). The reasonable use of this power has been approved in recent opinions of this office. Attorney General Opinion Nos. 76-293; 80-20; 81-197. Such restrictions are imposed by means of signs which provide notice of the restriction or prohibition and which are posted at either end of that portion of the road which has been so designated [K.S.A. 8-1912(b)]. The resolution or ordinance is not effective until such notice is posted.

In the event that such notices are posted, K.S.A. 8-1913 provides that:

"(a) Any person driving any vehicle, object or contrivance upon any highway or highway structure shall be liable for all damage which said highway or structure may sustain as a result of any illegal operation, driving or moving of such vehicle, object or contrivance, or as a result of operating, driving or moving any vehicle, object or contrivance weighing in excess of the maximum weight in this act but authorized by a special permit issued as provided in this article.

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"(b) Whenever such driver is not the owner of such vehicle, object or contrivance, but is so operating, driving or moving the same with the express or implied permission of said owner, then said owner and driver shall be jointly and severally liable for any such damage."

In our opinion, while Rush County is authorized to proceed against individuals or companies who cause road damage under these statutes, it does not have a right to do so apart from them. This result was reached by the court in the case of State Highway Comm. v. Stadler, 158 Kan. 289 (1944), where the prior statute (K.S.A. 8-5,124) was applied in a case where a county bridge had been damaged by a truck violating the posted weight limit. In limiting the county's right to recover, the court held:

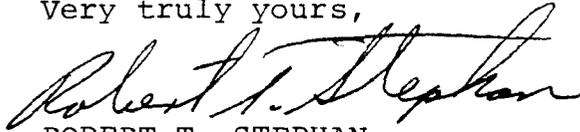
"We have no difficulty in concluding that the present statute was intended to be all-inclusive and embraces within its terms all the acts for which the driver or owner of a vehicle might be civilly liable to the commission in the event while driving on the highway he damages a highway or highway structure. The common law right of action has been superseded by the statutory one and so far as acts of negligence are concerned the commission's right of action is limited to such negligent acts as amount to illegal acts under the provisions of the Uniform Act Regulating Traffic on the highways. Common law negligence may now give rise to the statutory cause of action if the act relied on is illegal but it no longer gives appellant the right to rely upon a common law cause of action for negligence." 158 Kan. at 293-94.

In conclusion, in order to prevent damage to roads under its jurisdiction, a county may, pursuant to K.S.A. 8-1912, prohibit the use of, or impose limits upon the weight of vehicles using, such roads during certain periods when weather conditions would cause such use to inflict damage. Such limits become effective upon the passing of a resolution by the board of county commissioners and the posting of signs stating the limits or prohibitions, violations of which can

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result in a civil action to recover damages. In that any common law right of a county to bring an action for damages caused by negligent use of county roads has been superseded by statute, only acts which are illegal may give rise to a suit for damages.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle