



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 219

Michael E. Cleary
Assistant County Attorney
Harvey County Courthouse
Newton, Kansas 67114-0687

Re: Counties and County Officers -- Road and Bridge
Fund -- Maintenance of County-Owned Park Roads

Synopsis: County road and bridge fund moneys may be expended to maintain roads only if such roads have been designated "county roads" and satisfy applicable statutory and regulatory requirements and specifications. If a road within a county park does not qualify as a "county road," the expense of maintaining the road should be paid from the county park fund. Cited herein: K.S.A. 63-101, 68-5,101, 79-1947, 79-2934, Kan. Const., Art. 11, §5.

* * *

Dear Mr. Cleary:

You have requested an opinion from this office regarding whether moneys in the county road and bridge fund may be utilized to pay the costs of repairing and maintaining county-owned park roads. Presently, Harvey County levies a tax pursuant to K.S.A. 68-5,101 and limited by K.S.A. 79-1947 to provide moneys for the county road and bridge fund. We believe that the resolution of your inquiry turns on whether the subject roads are part of the county's road system intended to be maintained from the moneys raised by the tax levy authorized by K.S.A. 68-5,101.

K.S.A. 68-101(3) states:

"The term 'county roads' shall mean all roads designated as such by the board of county commissioners, including roads on the county secondary road system and class A roads in county road unit counties."

K.S.A. 68-101(3) is silent regarding the precise procedure by which a board of county commissioners designates a road as a "county road." However, at a minimum, the records of the board of county commissioners should reflect either that the statutory procedure specified at K.S.A. 68-102 et seq., for laying out a road has been satisfied or that some other affirmative action has been taken which recognizes an identifiable segment of road as a "county road." Moreover, any road so designated must, ab initio, satisfy all statutory or regulatory requirements and specifications. (See: e.g., K.S.A. 68-116 which prescribes minimum and maximum widths of county roads.) The mere presence of a road within a county park does not, per se, qualify same as a "county road" as that term is defined and utilized in K.S.A. 68-101 et seq. Therefore, if a road within a county park is not a "county road," moneys from the county road and bridge fund may not be used to maintain such road.

It is our considered opinion that this conclusion is required because of the limitation imposed by Article 11, Section 5 of the Kansas Constitution, which states:

"No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied." (Emphasis added.)

The purpose of this constitutional provision is to "prevent the misapplication of all taxes levied in pursuance of law." The State v. City of Emporia, 57 Kan. 710, 713 (1897). See, also: Smith v. Haney, 73 Kan. 506, 509 (1906), Trust Co. v. Grant County, 111 Kan. 104, 105 (1922), Grecian v. Hill City, 123 Kan. 542, 547 (1927), State, ex rel., v. Saline County Comm'rs, 128 Kan. 427 (1929), State ex rel., v. Kansas City, 140 Kan. 471, 480 (1934), State, ex rel., v. Bunton, 141 Kan. 103, 105 (1935), School District v. Clark County Comm'rs, 155 Kan. 636, 639 (1942) and, Redevelopment Authority of the City of Kansas City v. State Corp. Comm., 171 Kan. 581, 583 (1951).

In State, ex rel., v. Saline County Comm'rs, *supra*, the Court, citing the Constitution of the State of Kansas, Art. 11, §5, held unconstitutional a resolution of the county commission which authorized a loan from the county road fund to the state highway commission for improvements in the state highway system. The Court stated that the subject constitutional restriction

"is an insuperable barrier to the loaning of the funds named or to their application to the building of state highways. The taxes were levied in pursuance of law for specific purposes, and the funds derived from those levies must be exclusively applied to those purposes. Each of the funds is distinct from the others and it is beyond the power of the commissioners or others to divert funds raised by taxation for one purpose and apply them to another. It would be a violation of the constitution to apply the bond fund to the building of county roads or to apply the sinking fund to the building of county bridges."

Furthermore, use of the county road and bridge fund to maintain roads other than "county roads" would violate the so-called Budget Law (K.S.A. 79-2934), which states in relevant part:

"The budget as approved and filed with the county clerk for each year shall constitute and shall hereafter be declared to be an appropriation for each fund, and the appropriation thus made shall not be used for any other purpose.

. . . .

"No part of any fund shall be diverted to any other fund, whether before or after the distribution of taxes by the county treasurer, except as provided by law."

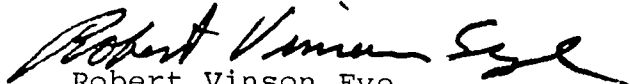
The purpose of the county road and bridge fund is, inter alia, to maintain "county roads." In contrast, the purpose of the county park fund is, inter alia, to maintain the county's park grounds and roads therein which are not "county roads." The above-cited constitutional provision and Budget Law would preclude any diversion of moneys from one fund to another.

In conclusion, county road and bridge fund moneys may only be expended to repair and maintain roads which have been designated "county roads" and which satisfy applicable statutory and regulatory requirements and specifications. If a road within a county park does not qualify as a "county road," the expense of maintaining such road should be paid from the county park fund.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Robert Vinson Eye
Assistant Attorney General