



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 248

The Honorable Denny D. Burgess  
State Representative, Sixty-First District  
Route 1, Box 292  
Wamego, Kansas 66547

Re: Roads and Bridges -- County and Township Roads --  
Appointment of Township Board Member as Road Super-  
visor

Synopsis: K.S.A. 68-530 provides for the employment of a road overseer by a township board. In townships with a population of 500 or less, the township trustee may be so appointed, if there is a unanimous vote of the board. Further, any of the township board members in such a township may perform work on township roads, subject to an annual limit of \$1,000. Given these express provisions, township board members in a township of more than 500 may not serve as the road overseer. Cited herein: K.S.A. 68-530, 68-531, L. 1973, ch. 266, §1.

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Dear Representative Burgess:

As State Representative for the 61st district, which includes a portion of Pottawatomie County, you request our opinion on a matter concerning a township board located therein. Specifically, you inquire whether a member of the board (*i.e.*, township trustee, clerk or treasurer) may be employed as the township road supervisor.

In general, questions of this type are governed by common-law principles set forth in Kansas court decisions. Chief among these is the concept of incompatibility of offices, which has been defined as an inconsistency in the functions of the two positions. Dyche v. Davis, 92 Kan. 971 (1914).

The inconsistency must be significant enough to make it improper, from a public policy standpoint, for one person to hold both offices. General authorities are in agreement. See, e.g., 67 C.J.S. Officers §27, 89 A.L.R.2d 632.

However, the situation you present is somewhat different, in that a statute enacted by the Kansas Legislature is applicable. This statute, K.S.A. 68-530, states:

"The township board, with the approval of the county engineer, shall appoint, on his merits only, a competent experienced road builder for road overseer for the entire township, who shall have charge of the construction and maintenance of all township roads, bridges, and culverts, under the supervision of the township board and the county engineer. When in the opinion of the county engineer the conditions demand it, the overseer may appoint one or more competent assistants, subject to the approval of the township board: Provided, In any township having a population of five hundred (500) or less, the township board by unanimous vote may designate the township trustee to act as road overseer or patrolman: Provided further, That the officers of any such township are hereby authorized to perform repair, maintenance and improvement work on township roads not to exceed a total cost to such township of one thousand dollars (\$1,000) per annum." (Emphasis added.)

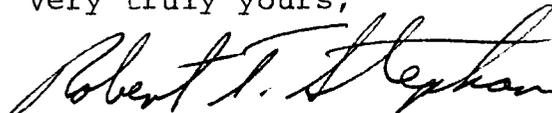
As can be seen from the underscored portions, the statute provides a special procedure for certain townships, i.e., those with a population of 500 or less. In such townships, the township trustee may, by unanimous vote, be designated as the road supervisor. Once so designated, the trustee may be paid according to the provisions of K.S.A. 68-531. He or she may also appoint assistants who may themselves be members of the board. See, e.g., Attorney General Opinion No. 79-242.

Given that the statute expressly allows certain townships to name the township trustee as road supervisor, what of those townships which do not meet the population requirements? In our opinion, such townships may not so act, applying the statutory rule of construction that the express mention of one situation by implication excludes any others (expressio unius est exclusio alterius). Southwestern Bell Telephone Co. v. Miller, 2 Kan. App.2d 558 (1978). Additionally, it must be presumed that the legislature was aware of the limiting effect that the population requirements would have. See,

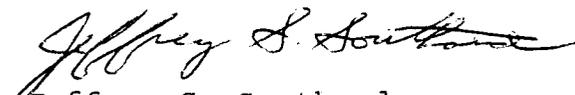
e.g., Rogers v. Shanahan, 221 Kan. 221 (1976). We note that prior to 1973, such limits were set at 10,000, and were expressly lowered that year. (L. 1973, ch. 266, §1.) Finally, while the last provision of the statute allows any of the township officers to perform work on township roads, it too is limited by the population limits imposed by the legislature. Allowing any township, regardless of size, to so act would be to negate a portion of the statute, a result which we are not prepared to reach in this situation. American Fidelity Ins. Co. v. Employers Mutual Casualty Co., 3 Kan. App.2d 245 (1979).

In conclusion, K.S.A. 68-530 provides for the employment of a road overseer by a township board. In townships with a population of 500 or less, the township trustee may be so appointed, if there is a unanimous vote of the board. Further, any of the township board members in such a township may perform work on township roads, subject to an annual limit of \$1,000. Given these express provisions, township board members in a township of more than 500 may not serve as the road overseer.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Assistant Attorney General

RTS:BJS:JSS:hle