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ATTORNEY GENERAL OPINION NO. 83- 23

The Honorable Clifford V. Campbell
State Representative, 106th District
State Capitol, Room 174-W
Topeka, Kansas 66612

Re: Roads and Bridges--County and Township Roads--
Culverts Over Ditches In Front of Private Property

Synopsis: A "good, safe crossing," as applied to a culvert connecting farm land to a public road under K.S.A. 68-543, means a crossing which will accommodate farm implements and vehicles reasonably used and required by the landowner. Cited herein: K.S.A. 66-301, 68-543, 68-1108.

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Dear Representative Campbell:

On behalf of a constituent, you request our interpretation of K.S.A. 68-543. Specifically, you request an opinion as to what constitutes a "good, safe crossing," as said term is used in the aforesaid statute.

K.S.A. 68-543 provides, in part, as follows:

"Whenever it is necessary to make a ditch along a public road in front of any property at such depth as will in the opinion of the officials in charge of such road obstruct any then existing entrance connecting such property with the public highway, it shall

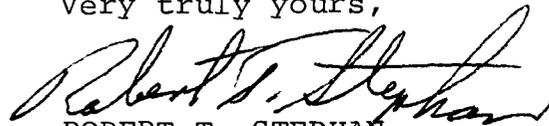
be the duty of the county engineer to cause to be constructed and maintained a substantial culvert over the said ditch, so as to make a good, safe crossing." (Emphasis added.)

The Kansas Supreme Court has not had occasion to specifically construe the extent of the duties imposed upon the county engineer by the above statute. However, in Cowan v. Rockford Township, 142 Kan. 698 (1935), the court indicated that the statute required the county to maintain a "driveway to the premises." Further, in Bohan v. Sumner County Comm'rs, 131 Kan. 87 (1930), it was held that a "fill" or a "bridge" was something more than the "substantial culvert" which is prescribed by the statute, and that a connection to a highway on a "trestlework bridge" (bridge approach) was something more than a "good, safe crossing."

Although there are no Kansas cases which provide specific guidelines as to what constitutes a "good, safe crossing," the Iowa Supreme Court has held that, in determining what constitutes an "adequate crossing" of railroad tracks, the reasonable uses and requirements of the landowner must be taken into consideration. See Klopp v. Chicago Rly Co., 157 N.W. 230 (1916); Guinn v. Iowa & St. L. R. Co., 101 N.W. 94 (1904). Similarly, K.S.A. 66-301, which relates to farm crossings, indicates that such crossings shall be constructed so as to permit ready and free crossing by farm implements and vehicles.

In our judgment, a "good, safe crossing," as applied to a culvert connecting farm land to a public road under K.S.A. 68-543, means a crossing which will accommodate farm implements and vehicles reasonably used and required by the landowner. The determination of whether a vehicle of a particular weight is reasonably required by the landowner is a factual question, and resolution thereof requires consideration of the reasonable requirements of the farming operation currently being conducted upon the land. Also, standard specifications for county culverts, as promulgated by the secretary of transportation under K.S.A. 68-1108, may be relevant evidence as to the sufficiency of a culvert in some cases.

Very truly yours,



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Attorney General of Kansas



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