



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 9, 1983

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 83-69

Harold L. Moss
Route 2, Box 72
Eureka, Kansas 67045

Re: Roads and Bridges -- County and Township Roads --
Adoption of County Road Unit System; Petition and
Vote

Synopsis: K.S.A. 68-515b provides that a board of county commissioners shall, upon the filing of a petition containing the requisite number of signatures, adopt the county road unit system. Any qualified elector may sign the petition, regardless of the location of his or her residence within the county. While county road employees are not barred by statute from assisting in the circulation of such a petition, they may not use public time or equipment in so doing. Cited herein: K.S.A. 46-236, 68-506, 68-515b, 68-516, 68-516c, 68-526, 68-5,100, K.S.A. 1982 Supp. 79-1947, U.S. Const., First Amend.

*

*

*

Dear Mr. Moss:

As township trustee for Eureka Township, in Greenwood County, Kansas, you request our opinion on two related questions concerning a proposed change to the county road unit system. Specifically, you ask whether residents of Eureka and other cities, who seldom use township roads, may participate in petition process to require adoption of the county system. Second, you ask whether county road employees may circulate petitions.

The county unit road system is one of two different methods by which roads in a county may be classified for purposes of maintenance. Under K.S.A. 68-516, roads in a county using the unit system are considered as either primary, secondary

or Class A, and are all maintained by the county, acting through the county engineer. Non-unit counties still contain primary and secondary roads, but do not have Class A roads. Rather, such roads which do not fall within the first two classes are deemed to be township roads (K.S.A. 68-506), and are left under the supervision and control of the respective townships. (K.S.A. 68-526). This includes the authority to impose a levy on township property for road purposes (K.S.A. 68-518c). In contrast, only the county levies a road tax under the unit system (K.S.A. 68-5,100, K.S.A. 1982 Supp. 79-1947).

A county in which there still exist township roads may adopt the unit system using the procedures set out in K.S.A. 68-515b. There, it is stated:

"Boards of county commissioners may adopt the provisions of the county road unit system by resolution at a regular meeting of said board, and in the event of the filing with the county clerk of a petition signed by ten percent (10%) of the qualified electors in the county, the board of county commissioners shall adopt the provisions of the county road unit system by resolution at the next regular meeting of said board: Provided, That in either event said resolution shall be published in a newspaper of general circulation in the county for at least three (3) consecutive weeks: Provided further, That such adoption shall take effect ninety (90) days after date of the first publication of the resolution providing for such adoption unless within such time there is filed with the county clerk a petition signed by ten percent (10%) of the qualified electors in the county protesting such adoption, in which event the board of county commissioners is hereby required to submit the question of a county road unit system to the electors of the respective counties." (Emphasis added.)

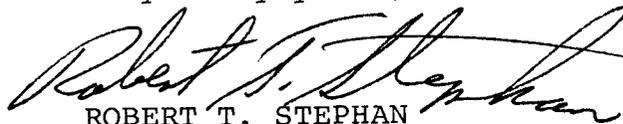
You inform us that a petition is currently being circulated which, if signed by 10% of the qualified electors, would require the county to adopt the unit system. Since there appears to be nothing in the statute which would exclude residents of an incorporated town such as Eureka, such residents would be proper signatories of such a petition, and, if a subsequent protest petition were filed, would be eligible to vote in the required election, as would any resident of the county. Accordingly, the amount of use they presently make of the township roads is irrelevant.

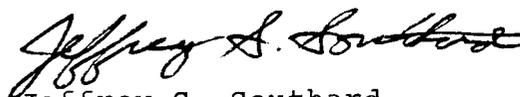
Harold L. Moss
Page Three

The statute is likewise silent as to any class of persons who are ineligible to participate in the petition process. Such a limitation would affect the right to freedom of speech which is guaranteed by the First Amendment to the United States Constitution, and so must be expressly set out rather than inferred. Cf. Buckley v. Valeo, 424 U.S. 1, 46 L.Ed. 2d 659 (1976), First National Bank of Boston v. Bellotti, 435 U.S. 765, 55 L.Ed.2d 707 (1978). Further, given the language of these cases and others cited therein, it is doubtful whether such a limitation would be constitutionally permissible. While statutes may validly limit the solicitation of campaign contributions (K.S.A. 46-236), as well as actual participation in partisan campaigns (18 U.S.C. §591 et seq., commonly known as the Hatch Act), the petition involved here represents only an expression of views as to the desirability of the road unit system in Greenwood County. While a different situation would certainly be presented if county employees were using county vehicles or equipment in the petition drive, or were seeking signatures while on the job, this would concern misuse of county moneys or property rather than a conflict of interest. In any event, you do not indicate that such a problem exists.

In conclusion, K.S.A. 68-515b provides that a board of county commissioners shall, upon the filing of a petition containing the requisite number of signatures, adopt the county road unit system. Any qualified elector may sign the petition, regardless of the location of his or her residence within the county. While county road employees are not barred by statute from assisting in the circulation of such a petition, they may not use public time or equipment in so doing.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle