



STATE OF KANSAS

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August 30, 1983

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ATTORNEY GENERAL OPINION NO. 83- 127

Craig D. Kershner
Lane County Attorney
P. O. Box 967
235 East Pearl
Dighton, Kansas 67839

Re: Townships and Township Officers -- Prairie Dog
Eradication -- Duty of Township Trustees; Entry
onto Private Land and Assessment of Costs

Synopsis: K.S.A. 80-1201 et seq., impose a duty on the township trustees of each Kansas township with regard to the eradication of prairie dogs in those counties in which there is an infestation. The trustee of each township is empowered to purchase such materials as may be needed for this task, including poisons, with the cost thereof spread as an additional mill levy upon real property in the township. While K.S.A. 80-1202 provides for notice to be given to landowners concerning the problem and, upon their failure to act, for entry by the township trustee or his agents upon private land, such provisions apply only to those counties which meet the criteria contained in the statute. The same is true regarding the provisions of the same statute which deal with the assessment of landowners who do not comply with the notice of the township trustee. However, as it is within the home rule authority of a county to provide for the eradication of prairie dogs, Lane County may adopt by resolution those provisions of K.S.A. 80-1202 which are otherwise applicable only to townships in certain counties. Cited herein: K.S.A. 1982 Supp. 19-101a(b), as amended by L. 1983, ch. 92, §1, K.S.A. 80-1202, L. 1969, ch. 472, §1.

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Dear Mr. Kershner:

As County Attorney for Lane County, you request our opinion regarding the construction to be given to those statutes which concern the duty of a township trustee to eradicate prairie dogs in those counties where there is an infestation of the rodents. Your queries concern K.S.A. 80-1201 et seq., which prescribes the procedures which may be taken in such cases, and specifically involve the construction to be given to K.S.A. 80-1202, both as to the types of materials which may be used to eliminate prairie dogs and the authority of the trustee with regard to private landowners.

The first portion of K.S.A. 80-1202 is relevant to the question of what materials may be employed, and states as follows:

"In addition to the duties now prescribed by law for township trustees, in counties infested by prairie dogs, they may do and perform the following services: That the township trustees of the several townships in this state infested by prairie dogs may enter upon the lands so infested in their respective townships and make diligent efforts to exterminate all prairie dogs thereon. For the purpose of enabling them to carry into effect the provisions of this act, the trustees are authorized and empowered to employ all such assistance and to purchase the poison or such appliances and material as they may deem necessary to exterminate such dogs. . . ."

You inform us that township trustees are unclear whether methods involving the use of pesticide fumigants would be permitted under the statute, which speaks of the use of "poison." While the intent of the legislature when this statute was enacted in 1909 was very probably limited to the traditional bait types of poison, in which food which has been chemically treated is left for the prairie dogs to ingest, we believe it would be an unduly narrow reading of the statute to find that this is the only method which can be used. Fumigants have the same result as poisoned bait, and in addition may be pumped into the burrows in which the animals live, thus being more effective and less harmful to other forms of wildlife which might otherwise eat the poisoned bait. "Poison" has a commonly understood meaning as any substance which produces a harmful or deadly effect upon a living thing, and we have no hesitation in concluding that the statute should be construed using this broad definition. See, e.g., Stephens v. Van Arsdale, 227 Kan. 676 (1980).

Your second query concerns the application of the remaining portion of K.S.A. 80-1202, which states:

"That in any county having a population of more than four thousand (4,000) and less than five thousand two hundred (5,200) which contains no city of the second class and not more than two (2) cities of the third class, the trustees shall before entering upon the lands give written notice to any land owner who shall fail or refuse to make use of the materials offered or provided, that unless he or she endeavors to control such prairie dogs according to the methods prescribed by the board of trustees will, within fifteen (15) days after the date specified in the notice enter upon his or her land and use the necessary materials to eradicate the prairie dogs thereon; and the trustees or their agents, may thereafter enter upon the land and proceed to eradicate such prairie dogs.

"After eradication of such prairie dogs, the trustees shall immediately notify the landowner or landowners with an itemized statement of the costs thereof, and stating that unless such amount is paid within thirty (30) days from the date of the notice, that the amount shall become a lien upon their real estate. If such costs are not paid within thirty (30) days they shall be assessed against the property of the landowner and the township clerk shall, at the time of certifying other township taxes to the county clerk, certify the costs of such eradication and the county clerk shall extend the same on the tax roll of the township against such property and said costs shall be collected by the county treasurer and paid to the township as other township taxes are collected and paid."

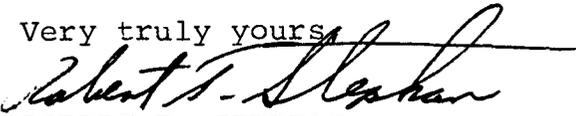
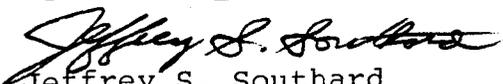
In that Lane County does not fit the parameters of this statute as to population (having less than 4,000 inhabitants), you inquire what provisions, if any, apply regarding the giving of notice to private landowners before action is taken by a township and the assessment of costs for eradication.

In that the entire portion of the statute which is quoted immediately above was added to K.S.A. 80-1202 at one time (L. 1969, ch. 472, §1), it is our opinion that it should be read as a single unit, with the result that the notice and

assessment provisions apply only to counties which meet the prescribed standards. Under that portion of the statute which existed before the 1969 amendment, township trustees already had the right to enter onto private land for the purpose of prairie dog extermination. However, the original language did not provide for prior notice to the property owner or for assessment of radication costs. For whatever reason, the legislature required such notice only in a few limited situations, and authorized assessments only after owners who had received such notice had failed to act within 15 days. Attorney General Opinion No. 77-361 reached this same conclusion, and is affirmed.

However, the above is not to say that a county such as Lane is without the power to act in this area, and, if desired, provide notice to landowners before eradication efforts are undertaken. Attorney General Opinion No. 77-392, a copy of which is enclosed, noted that a county may, under the operation of its home rule authority, enact a resolution which incorporates part or all of that language of K.S.A. 80-1202 which is otherwise applicable only to certain counties. As the opinion states, such action may be in the form of an ordinary, rather than a charter resolution, in that K.S.A. 80-1202, which concerns only the power of townships, is not being amended. Accordingly, the resolution may be adopted pursuant to K.S.A. 1982 Supp. 19-101a(b), as amended by L. 1983, ch. 92, §1.

In conclusion, K.S.A. 80-1201 et seq., impose a duty on the township trustees of each Kansas township with regard to the eradication of prairie dogs in those counties in which there is an infestation. The trustee of each township is empowered to purchase such materials as may be needed for this task, including poisons, with the cost thereof spread as an additional mill levy upon real property in the township. While K.S.A. 80-1202 provides for notice to be given to landowners concerning the problem and, upon their failure to act, for entry by the township trustee or his agents upon private land, such provisions apply only to those counties which meet the criteria contained in the statute. The same is true regarding the provisions of the same statute which deal with the assessment of landowners who do not comply with the notice of the township trustee. However, as it is within the home rule authority of a county to provide for the eradication of prairie dogs, Lane County may adopt by resolution those provisions of K.S.A. 80-1202 which are otherwise applicable only to townships in certain counties.

Very truly yours,

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Jeffrey S. Southard
Assistant Attorney General