



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 85- 172

The Honorable William M. Bryant, D.V.M.  
State Representative, Sixty-Third District  
Rural Route 2  
Washington, Kansas 66968

Re: Roads and Bridges -- County and Township Roads --  
Classification and Designation of Roads in a  
Non-County Road System

Synopsis: A county is primarily responsible for the maintenance of main traveled highways which lie within a city and which connect county primary roads with the city, although a city is also empowered to aid in the maintenance of such roads. K.S.A. 68-506. Thus, in the event of a controversy over the maintenance of a county road which passes through a third-class city, and to ensure the most efficient use of public funds, an interlocal agreement apportioning the costs between the county and the city may be formed. Cited herein: K.S.A. 12-2901; 12-2904; 12-2905; 12-2907; 68-169; 68-506; 68-506e; 68-572; 79-2925; L. 1967, ch. 354.

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Dear Representative Bryant:

As State Representative for the 63rd District, you request our opinion as to who is responsible for the maintenance of a public road. Specifically, you inquire as to which governmental entity has the primary responsibility for maintenance of a county road which passes through a third class city, and to what extent, if any, the county is responsible to the city for road maintenance.

You inform us that Washington County intends to pay the City of Haddam (a city of the third class) the amount of \$250 per mile per year for the maintenance of those streets in Haddam which are part of the county connecting link system. Initially, it may appear that this arrangement is authorized by K.S.A. 68-506e, which states:

"The board of county commissioners of each county shall annually apportion and distribute quarterly to each city on the county highway system from the fund known as the county and township road fund at the rate of two hundred fifty dollars (\$250) per mile for the maintenance of the streets in such cities used as connecting links in the system of county highways which are not connecting links in the state highway system, said moneys to be credited to the street and alley fund of such cities. In lieu of said apportionment the board of county commissioners may maintain in cities of the third class such streets and pay for such maintenance from the county and township road fund."

However, this statute is no longer meaningful to the issue at hand, in that K.S.A. 68-416(b)(1) provides: "The fund known as the 'county and township road fund' is hereby abolished . . . ." Thus, this provision of K.S.A. 68-506e is not relevant since the county and township road fund no longer legally exists. However, as you note in your letter, the county is authorized to pay a city \$250 per mile, or more or less, under the county's home rule authority. We agree with this interpretation.

A more applicable statute, K.S.A. 68-506, provides in relevant part:

"Whenever any main traveled highway is located partly within and partly without a city and connects a county primary road with a city, by and with the consent of the governing body, and with the final approval of the secretary of transportation, the board of county commissioners is hereby given power and authority and required to designate such

public highway as a part of the county primary road system, and it shall be improved and maintained as other parts of the county primary road system, except that the governing body of such city may aid in the construction, maintenance and improvement of such road as it would were the said highway wholly within the corporate limits of said city." (Emphasis added.)

As we interpret this statute, the county is primarily responsible for the maintenance of those "main traveled highways" which lie within a city and which connect a county primary road with the city. See, e.g. City of Independence v. Montgomery County Comm'rs, 140 Kan. 661 (1934). At the same time, however, under county home rule, a board of county commissioners has wide discretion as to how it will distribute its annual budget. Thus, in the event of a controversy over the maintenance of a county road which passes through a third class city, and to ensure the most efficient use of public funds, an interlocal agreement apportioning the costs between the county and the city may be formed. K.S.A. 12-2901 et seq.

Regarding such agreements, K.S.A. 12-2901 states:

"It is the purpose of this act to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities, persons, associations and corporations on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities."

K.S.A. 12-2904 goes on to say:

"(b) Any public agency may enter into agreements with one or more public or private agencies for joint or cooperative action pursuant to the provisions of this act."

Under such an agreement, which the county counselor would be able to prepare, the city could contract with the county for performance of road maintenance work.

Earlier this year, Attorney General Opinion No. 85-57 addressed the related issue of whether a township could utilize revenue produced by taxes levied for road maintenance to contract with a county, under the terms of an interlocal agreement, for the performance of road maintenance work. As in the situation at hand, the county was not under the county road unit system. A number of the smaller townships were either unable or unwilling to maintain their roads, and the county was interested in relieving them of this obligation. The opinion concluded that an interlocal agreement between the county and each one of the townships which desired the county to maintain its roads would be possible under K.S.A. 12-2901 et seq.

Likewise, although we find Washington County, rather than the city of Haddam, primarily responsible for the maintenance of a county primary road which passes through the city (K.S.A. 68-506), we believe that an interlocal agreement would be extremely beneficial in resolving this issue. Given the fact that the county road is utilized by citizens living in Haddam, it seems equitable that the expenses should be apportioned between the two governments. The city could appropriate its share of the necessary funds and turn them over to the county pursuant to K.S.A. 12-2907 and as the joint agreement may provide. We also call to your attention the provisions of K.S.A. 12-2904(f) (approval of the attorney general required) and K.S.A. 12-2905 (filing of agreement with register of deeds and secretary of state). In addition, funds provided by the county pursuant to such an agreement must be budgeted and expended in accordance with Kansas law, particularly the Budget Law, K.S.A. 79-2925 et seq.

In addition to K.S.A. 12-2901 et seq., two other statutes authorize interlocal cooperation. K.S.A. 68-169 supplements K.S.A. 12-2904, and provides in relevant part:

"Any county, city or political subdivision of this state shall have the authority to enter into written agreements with each other or with the secretary of transportation with respect to the planning, designing, financing, constructing, reconstruction, maintaining, acquiring of right-of-way or establishing

to controlled access facilities of any existing or proposed highway, road, street or connecting link, including bridges, traffic control devices and other such improvements located thereon.

Expenditures made pursuant to such agreements shall be considered proper expenditures of public funds, including state funds, notwithstanding the location of such improvement or facility outside the boundary or jurisdiction of such county, city or political subdivision."

K.S.A. 68-572 specifically addresses intergovernmental agreements for road construction and maintenance, and states:

"The board of county commissioners of any county, any township board of highway commissioners of the county or city governing body within such county are hereby authorized to enter into agreements for the construction, reconstruction or maintenance of any roads or streets."

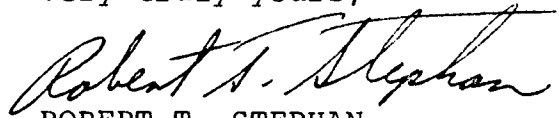
Thus, it appears the legislature has expressly authorized the forming of contracts between cities and counties. In Attorney General Opinion No. 80-213, we concluded that cities and counties are authorized to enter into agreements with each other for the construction, reconstruction or maintenance of any roads or streets without the letting of competitive bids. That opinion noted that the title of the act (see L. 1967, ch. 354) makes clear that the agreements referred to in the above quotation are agreements by and between cities, counties and townships. The title of the act is stated, in pertinent part, thus:

"An Act relating to intergovernmental cooperation, authorizing counties, townships and cities to contract with each other as to the improvement of roads and streets . . . ."

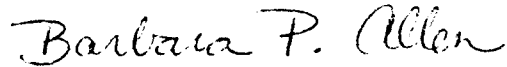
In conclusion, it is our opinion that the county is primarily responsible for the maintenance of main traveled highways which lie within a city and which connect county primary roads with the city, although a city is also empowered to aid in the maintenance of such roads. K.S.A. 68-506. Thus, in the event of a controversy over the maintenance of a county road which

passes through a third-class city, and to ensure the most efficient use of public funds, an interlocal agreement apportioning the costs between the county and the city may be formed.

Very truly yours,



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