



STATE OF KANSAS

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March 31, 1986

ATTORNEY GENERAL OPINION NO. 86- 47

Michael P. Herrell
Gypsum Township Trustee
Rt. #1, Box 189-3
Derby, Kansas 67037

Re: Townships and Township Officers--Township
Trustee--Powers and Duties Generally

Roads and Bridges--Roads; County and Township
Roads--Duties of Township Board; Plans, Materials
and Equipment

Synopsis: In all counties not operating under the county road unit system, the maintenance of township roads and the purchase of equipment necessary to perform such maintenance, is the duty of the township board. K.S.A. 68-526. For this purpose, the township board consists of the trustee, the treasurer and the clerk. Because these are township board functions, no one officer acting alone may substitute his authority for that reserved to the board. To the extent the language of K.S.A. 68-526 conflicts with the general duties delegated to the trustee pursuant to K.S.A. 80-301, the earlier language of K.S.A. 80-301 must be deemed to be repealed by implication. Cited herein: K.S.A. 68-101; 68-526; 68-530; 80-301; 80-401; 80-501.

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Dear Mr. Herrell:

As Trustee of Gypsum Township, Sedgwick County, Kansas, you request our opinion regarding the duties and powers of the township trustee in township road maintenance and other areas. Specifically, you question whether the trustee may make decisions regarding purchase of road equipment and take charge of construction and maintenance without conferring with the other township board members, i.e. the township treasurer and clerk.

K.S.A. 80-301 defines the township trustee's duties in general as follows:

"The duties of the township trustee shall be.

"First. To divide his or her township into convenient road districts, and make such alterations in the same as may be necessary.

"Second. To fill all vacancies in the office of road overseer in his or her township.

"Third. To see to a proper application of all moneys belonging to his or her township for road or other purposes.

"Fourth. To have the care and management of all property, real and personal, belonging to his or her township, and to superintend the various interests thereof.

"Fifth. To cause a record to be made accurately defining the boundaries and number of each road district, as well as the alterations made in such district or districts in his or her township, and the number of road overseers in each township.

"Sixth. Shall have power to administer all oaths in the necessary discharge of the duties of his or her office.

"Seventh. Shall superintend all the pecuniary concerns of his or her township, and shall at the July session of the board of county commissioners, annually, with the advice and concurrence of said board levy a tax on the property in said township for township road and other purposes, and report the same to the county clerk, who shall enter the same on the proper tax roll in a separate column or columns, and the treasurer shall collect the same as other taxes are collected; but in a failure of such trustee and commissioners to concur, then the board of county commissioners shall levy such township road and other taxes.

"Eighth. He or she shall discharge such other duties as may be imposed by law."

By the terms of this statute alone, it might appear that the trustee of a township has sole discretion as to what work is to be done on township roads and what purchases must be made to accomplish that work.

However, K.S.A. 68-526 provides as follows:

"In all counties not operating under the county road unit system the township board shall have the general charge and supervision of all township roads and township culverts in their respective townships, and shall procure machinery, implements, tools, drain tile, stone, gravel, and any other material or equipment required, for the construction or repair thereof. All work shall be done in accordance with plans and specifications and the general regulations to be prepared and furnished by the county engineer. . . ." (Emphasis added.)

"Township board" is defined at K.S.A. 68-101(1) as "the governing body of the township composed of the township trustee, the township clerk and the township treasurer." Thus the duty of supervising township roads, their construction and maintenance, is a township board function. This office has held previously that "[s]uch functions are to be performed

by the board and no one officer acting alone has the power to substitute his or her own authority for that reserved to the board." Attorney General Opinion No. 81-141. See also, 87 C.J.S. Towns §79.

The problem of potentially conflicting language between two statutes (here K.S.A. 68-526 and 80-301) is also discussed in Attorney General Opinion No. 81-141:

"Because the legislature has changed the management authority of the township officers over the years, conflicting statutory language may delegate the same or similar duties to an individual officer and to the township board. Under principles of statutory construction, earlier language is impliedly repealed to the extent that it conflicts with later statutory language dealing specifically with the same subject matter. The rule so stated by the Kansas Supreme Court in Arkansas City v. Turner, 116 Kan. 407, 409 (1924) is:

'It is an elementary rule of statutory construction that where a manifest conflict between two statutes cannot be reconciled so as to give reasonable operative effect to both, the later enactment, as the last expression of the legislative will, controls, and the earlier enactment is deemed to have been repealed by implication.'

"Thus, duties defined in the more recent statutes control in cases of irreconcilable conflict."

K.S.A. 80-301 was enacted in 1868, as were the statutes which describe the principal duties of the township treasurer and township clerk (K.S.A. 80-401 and 80-501). K.S.A. 68-526 was enacted in 1917. Thus, under accepted rules of statutory construction, the language of K.S.A. 80-301 must be deemed to be impliedly repealed to the extent that it conflicts with K.S.A. 68-526.

We note further that in certain circumstances, the township trustee may act as township road overseer or patrolman, but

only in townships having a population of 500 or less, and the trustee must be designated to act as such by unanimous vote of the township board. K.S.A. 68-530. Otherwise, the township board, with the consent of the county engineer, is to appoint a "competent experienced road builder for road overseer," (K.S.A. 68-530) and "the trustee, acting alone under K.S.A. 80-301, Second, has no such authority." Attorney General Opinion No. 78-147.

In conclusion, in all counties not operating under the county road unit system, the maintenance of township roads and the purchase of equipment necessary to perform such maintenance, is the duty of the township board. K.S.A. 68-526. For this purpose, the township board consists of the trustee, the treasurer and the clerk. Because these are township board functions, no one officer acting alone may substitute his authority for that reserved to the board. To the extent the language of K.S.A. 68-526 conflicts with the general duties delegated to the trustee pursuant to K.S.A. 80-301, the earlier language of K.S.A. 80-301 must be deemed to be repealed by implication.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Assistant Attorney General

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