



STATE OF KANSAS

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December 21, 1987

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ATTORNEY GENERAL OPINION NO. 87- 183

Mr. Robert Arnold
County Counselor
Sedgwick County Kansas
County Courthouse
Suite 359
Wichita, Kansas 67203-3790

Re: Roads and Bridges -- General Provisions;
Acquisition of Real Property for Highway, Road or
Street Purposes -- Direct Payment to Seller for
Certain Lands or Interests Therein; Use of
Seismographic Equipment on County Roads

Synopsis: When a county obtains an easement to create a
county road thereby facilitating public travel, the
extent of county interest in and authority over the
land is defined by the purpose and character of the
easement. When the county possesses an easement
granted for a specific purpose and use, the county
has no authority to grant permission for other uses
outside the scope of the easement. Use of
seismographic equipment to promote another public
purpose that does not advance the purpose of public
travel is beyond the scope of the use for which the
easement was granted. Cited herein: K.S.A. 68-182.

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Dear Mr. Arnold:

As Sedgwick County Counselor, you request our opinion on
whether the board of county commissioners may permit, without

permission of adjacent landowners, seismic testing to be done on county roads for non-profit educational purposes. Specifically, you inform us that the proposed testing would be conducted by a private company employed by a university. Additionally, you advise that the county's ownership of these roads derives from adjacent landowner's respective grants of easement. You refer our office to Attorney General Opinion No. 81-242, which opined that a county may not permit private companies to operate seismographic equipment on county roads unless the county owns the road in fee. You ask whether the law recognizes a general "public purpose" exception to the rule requiring landowner consent when the county's interest in the property derives from a grant of an easement.

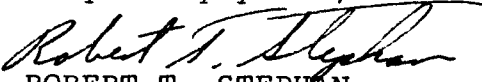
An easement is generally defined as "a right of use over the property of another." Blacks Law Dictionary 457 (5th ed. 1979). The rights of the entity having an easement in the land of another are measured and defined by the purpose and character of the easement. 25 Am.Jur.2d Easements and Licenses §72 (1966). An easement imposed upon the lands of another extends to uses which directly or indirectly advance the purposes for which it was obtained. Spears v. Kansas City Power and Light Co., 203 Kan. 520, 527 (1969). Thus, if the easement is the only interest the county holds to property, the purpose for which the county gained the easement will necessarily determine the extent and types of uses the county may permit.

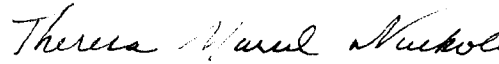
K.S.A. 68-182 allows acquisition of an easement in order to create a county road. The public's right to use such a road is the right to use it for purposes of travel. State v. Greene, 5 Kan.App.2d 698, 704 (1981). This public right allows the county to approve any use directly or indirectly advancing that purpose. Permission from the county for any other uses, even for uses advancing other public purposes, improperly extends beyond the character and nature of the easement granted.

Use of seismographic equipment, even for a public purpose, is not a use that directly or indirectly advances the purpose of public travel. That is the purpose for which the easement was granted. Thus, the county has no authority to grant permission for use of seismographic equipment on county roads, unless the county increases its interest beyond the scope of the interest heretofore held or unless the use of the seismographic equipment directly or indirectly advances public travel. It is our opinion that the proposed seismic testing does not advance such a purpose and that therefore the county

does not have the authority to grant permission for such testing.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bar