



STATE OF KANSAS

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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.

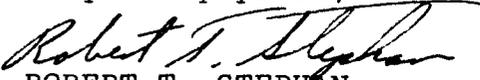
An easement is generally defined as "a right of use over the property of another." Blacks Law Dictionary 457 (5th ed. 1979). The rights of the entity having an easement in the land of another are measured and defined by the purpose and character of the easement. 25 Am.Jur.2d Easements and Licenses §72 (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

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