



STATE OF KANSAS

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March 27, 1991

ATTORNEY GENERAL OPINION NO. 91- 30

Louis W. Cates, Trustee
Minneha Township
Box 9510
Wichita, Kansas 67277

Re: Townships and Township Officers -- Miscellaneous
Provisions -- Tax Levies for Funds to Improve
Township Roads

Synopsis: In the absence of an interlocal agreement
pursuant to K.S.A. 1990 Supp. 12-2901 et seq.
or an intergovernmental agreement pursuant to
K.S.A. 1990 Supp. 68-572, a township is not
required nor permitted, to repair and maintain the
residential side streets in a third class city
located within that township as a part of the
township's regular road maintenance program. Cited
herein: K.S.A. 1990 Supp. 12-2901; K.S.A.
15-104; 15-718; 15-719; 15-720; 15-731; 15-733;
68-518c; 68-526; 68-536; K.S.A. 1990 Supp.
68-572; K.S.A. 80-115; 80-932; 80-1413; 80-1903.

* * *

Dear Mr. Cates:

On behalf of the Minneha Township board you request our
opinion as to whether Minneha Township is required to repair
and maintain the residential side streets in the city of
Eastborough, a third class city located within the township,
as a part of the township's regular road maintenance program.

By statute, a third class city remains a part of the corporate limits of the township in which the same is situated. K.S.A. 15-104. As a consequence, taxation by a township of property within a third class city is authorized for some purposes. Jackson Township v. Wood, 55 Kan. 628 (1895). Various statutes authorize townships to levy a tax on the taxable tangible property in such township for various township purposes, e.g. repairing, equipping and maintaining a township hall (K.S.A. 80-115), care and maintenance of cemeteries (K.S.A. 80-932), and operating and maintaining a fire department (K.S.A. 80-1903).

In contrast, township taxing authority for improving township roads is addressed in a different manner by K.S.A. 80-1413 which in pertinent part provides:

"The township board of any township may, upon resolution adopted by a majority of the board, submit to the qualified electors of the township who reside outside of the corporate limits of any city, at any general election or special election called for that purpose as provided by law for bond elections, the question of levying a special tax not to exceed 10 mills for a specified number of years for the purpose of raising funds with which to improve township roads. . . . If a majority of those voting on such question shall vote in favor thereof the township board shall levy the tax as authorized on all the tangible property in such township which has a tax situs outside the corporate limits of any such city. Such levy shall be in addition to all other taxes authorized or limited by law.

"In counties not operating under the county road unit system, the proceeds of such levy shall be used by the township board for the sole purpose of grading, sanding, graveling or otherwise improving township roads and shall first be used on township roads which are mail routes and on roads leading from mail routes to schools and cemeteries in the township. . . ."

That statute makes clear that for road improvement purposes, the taxing authority of a township excludes otherwise taxable tangible property located within a third class city. The statute also makes clear that funds raised from such a special tax levy are limited to the use of improving township roads. By virtue of K.S.A. 80-1413 a township is prohibited from expending such funds for any other purpose. Repair and maintenance of residential side streets in a third class city would be a purpose prohibited by K.S.A. 80-1413.

Further, K.S.A. 68-518c provides township authority for an additional levy on all taxable tangible property in the township located outside of incorporated cities. Any moneys so derived are required to be used for the construction, reconstruction, improvement, repair and maintenance of township roads and culverts.

One other statute, K.S.A. 68-536, also makes clear that township road tax moneys may be used only for township roads. That statute provides:

"The township treasurer shall receive from the county treasurer the road tax in compliance with the provisions of the act, and the township board of highway commissioners shall appropriate the same for construction, maintenance and drainage of township roads and township bridges and culverts, and for overseeing and supervising the same within their respective townships outside the corporate limits of cities, and for the purchase of tools, machinery and equipment to be used on such roads."

See also K.S.A. 68-526 which specifies that in counties not operating under the county road unit system, such as Sedgwick County, the township board shall have the general charge and supervision of all township roads and township culverts.

Therefore, while residents of third class cities located within a township may pay township taxes on tangible property, funds thereby collected are not available for improving township roads. Residents of third class cities do not pay the special township tax authorized by K.S.A. 80-1413 which may be used only for the purpose of raising funds with which to improve township roads.

Several statutory mechanisms are available to third class cities for raising funds to improve and repair streets within third class cities. See K.S.A. 15-718, 15-719, 15-720, 15-731 and 15-733. We note in particular that K.S.A. 15-733 authorizes a third class city to levy a tax on all taxable tangible property located within such city in order to finance improvement and maintenance of third class city streets. The statutory scheme therefore contemplates repair and maintenance of streets within a third class city to be paid for by residents of that city, and repair and maintenance of township roads to be paid for by township residents excluding those residents who reside within the limits of a third class city.

In conclusion, a township is not required or, in the absence of an interlocal agreement pursuant to K.S.A. 1990 Supp. 12-2901 et seq. or an intergovernmental agreement pursuant to K.S.A. 1990 Supp. 68-572, permitted to repair and maintain the residential side streets in a third class city located within that township as a part of the township's regular road maintenance program.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Camille Nohe
Assistant Attorney General

RTS:JLM:CN:bas