

FILE

Subject

~~Case No.~~

Highways - Roads
Sherman County
Maintenance



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER

Attorney General

March 12, 1974

Opinion No. 74- 83

B. E. Whalen
Sherman County Attorney
Sherman County Courthouse
Goodland, Kansas

Dear Mr. Whalen:

You advise that the county commissioners of Sherman County, Kansas, have received a statement from the county commissioners of Kit Carson County, Colorado, stating that on December 10, 1970, one and one-half miles of road between the two counties was maintained by the Colorado county. A claim for the sum of \$1,384.00 was lodged against Sherman County.

You indicate that in 1970, the roads in Sherman County were maintained by townships, and that in 1972, the county adopted the county unit system. You question whether any enabling legislation authorized Sherman County to enter into an agreement with a county in a neighboring state for the maintenance of a county road on the state line.

As you point out, K.S.A. 68-507 provides in pertinent part thus:

"Whenever any public road located upon the dividing line between counties is . . . the main traveled road . . . , it shall be the duty of the county engineer and board of county commissioners of each of the counties . . . to designate such road as a county road. It shall be the duty of the board of county commissioners of each of the counties . . . to divide the work of maintaining and repairing such road into two parts . . . as nearly equal as practicable, one county taking one section and the other county the other section . . ."

Given the fact that this statute cannot be given extraterritorial application, it provides no practicable basis for distributing

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responsibility for maintaining state boundary roads between counties of this and adjacent states.

K.S.A. 12-2901 et seq. authorizes counties of this state to enter into agreements with counties of other states, for the exercise of their powers relating to

"public improvements, public utilities, police protection, libraries, data processing services, building and related inspection services, flood control and storm water drainage, sewage disposal, refuse disposal, park and recreational programs and facilities, ambulance service, or fire protection"

Road maintenance, as distinguished from public improvements, is not enumerated as a permissible subject of interlocal agreement.

It is, however, certainly a responsibility of the county to provide for the maintenance of county roads. If services have been performed for or on behalf of the county, albeit by a county of another state, it is fairly within the power of the county to settle claims therefor, and such authority may be deemed to rest within the powers of the commissioners enumerated at K.S.A. 19-212, Sixth, to "have the care of the county property, and the management of the business and concerns of the county, in all cases where no other provision is made by law." Maintenance of a county road, or an appropriate part therein, is surely part of the "business and concerns" of the county, with respect to which, in this instance, the county may be deemed to have the authority to act where no other provision is made by law.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm