



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 5, 1976

ATTORNEY GENERAL OPINION NO. 76-120

Mr. Philip E. Winter
Assistant County Attorney
Lyon County Courthouse
Emporia, Kansas 66801

Re: Counties--Bridges--Abandonment

Synopsis: Upon vacation of a road, the county may dispose of the bridge by dismantling the same and salvaging the materials therein, or may dispose of the bridge in the same manner as other property of the county, including conveyance to an adjacent landowner.

* * *

Dear Mr. Winter:

You inquire whether, when a county government vacates a road whereon there is a bridge, and a single landowner owns land on both sides of the vacated road and bridge, the county may turn the bridge over to the landowner.

There appears to be no statutory provision providing for the abandonment of bridges. In the absence of any controlling statutory provision, it is appropriate for the board of county commissioners to enact authorizing legislation in the exercise of its local legislative powers under K.S.A. 19-101a(b). The bridge may constitute valuable property of the county. For example, it may contain substantial amounts of salvageable material which could be used elsewhere by the county or which the county might choose to dispose of. If the county chooses not to remove the bridge and use its material elsewhere, and chooses instead to dispose of it otherwise, it must be disposed of in accordance with K.S.A. 19-212. *I.e.*, if the value of the bridge, which may very well be only for salvage purposes, exceeds \$5,000, the required public notice must be given and a unanimous vote of the

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county commissioners is required. If the bridge has a lesser value, the commissioners may dispose of it on such terms as it deems appropriate. Depending upon the value of the material in the bridge and the costs of removal, the board may find it in the interests of the county to convey the bridge to the landowner for a nominal consideration.

You ask what might be the liability of the county concerning the bridge on the vacated road if it is turned over to the landowner. Presumptively, if title to the vacated road vests in the adjacent landowner, and title to the bridge vests in the landowner as a result of conveyance by the county, it has no further liability. However, because of the totally unforeseeable circumstances under which possible claims of liability may arise, it is virtually impossible for us to furnish any definitive opinion that the county may have no exposure to liability whatever as a result of some injury or damage which might occur at a later date.

You inquire, also, concerning possible liability of the county concerning bridges which are structurally sound but which are narrower than those prescribed by law, as is the case of a number of the older bridges in the county on county roads. Bridge widths are prescribed by K.S.A. 1975 Supp. 68-1109. In *Sell v. McPherson Township*, 152 Kan. 731, 107 P.2d 670 (1940), the court stated thus:

"It should be kept in mind that the only basis for imposing liability on a township for an accident happening on a township road is the township's failure to conform to the statutory requirements for their construction and maintenance. Liability is not imposed as for common-law negligence. And whether a public road is defective within the meaning of the statute . . . is a question of law, when, as here, there is no controversy over the facts."

In *Martin v. State Highway Commission*, 213 Kan. 877, 518 P.2d 437 (1974), the court stated thus:

"[R]egardless of the source of the condition claimed to constitute a defect, liability for such condition has always been predicated on either (1) the failure to comply with a specific legislative mandate, or (2) the existence of a condition creating actual peril to persons using the highway with due care." 213 Kan. at 882.

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If the bridge was constructed in accordance with width requirements in force at the time of its construction, and any signs required by the manual for a uniform system of traffic control devices promulgated by Secretary of Transportation are posted and maintained respecting narrow bridges, there would appear to be little basis for liability.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj