



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 14, 1977

ATTORNEY GENERAL OPINION NO. 77-57

Mr. William L. Navis
Republic County Attorney
Republic County Courthouse
Belleville, Kansas 66935

Re: Counties--Roads--Easements

Synopsis: Action by a board of county commissioners to authorize installation of underground irrigation pipe on the right-of-way of a county road does not intrude upon the rights of abutting landowners who hold title subject to the public easement, for the board of county commissioners holds complete and exclusive use of the public easement.

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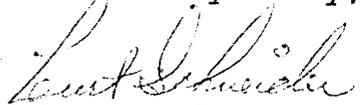
Dear Mr. Navis:

You inquire concerning the grant of an easement for an underground water line for irrigation purposes. In particular, you advise that the board of county commissioners of Republic County has entered into an agreement with one or more individuals, permitting them to lay underground water lines along and adjacent to a county road, using the county rights-of-way as the site for installing such pipe. The irrigation system itself is not operated on the right-of-way, which is used only for the laying of pipe serving a system on private property. You request our opinion concerning questions which were raised and addressed in an opinion dated December 14, 1976, furnished to the members of the board of county commissioners of Republic County by your predecessor in office, who concludes that the county has infringed upon the rights of adjacent landowners in granting such permission.

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The general rule is that the county holds an easement interest in and not fee title in property used for county roads. However, the county enjoys, pursuant to that easement, exclusive use of the right-of-way, and abutting landowners, as holders of the fee title and right of reverter, having no authority to permit any use of the public easement whatever, so long as it remains occupied by the county and unless and until the road is abandoned. Thus, although installation of irrigation pipe to service a private irrigation system is not perceptibly incident to the public use of the county road itself, at the same time it does not in any way infringe upon the rights of abutting landowners, for unless and until the public easement is abandoned, it remains in full force and effect, and the county enjoys exclusive use and control thereof. An abutting landowner holds no right coextensive with the county to grant or withhold permission for use of the right-of-way or the road itself, and in my judgment, the county has not intruded upon any legal or equitable property interest of abutting landowners in authorizing use of the right-of-way for installation of the water line in question.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj