

STATE OF KANSAS

## Office of the Attorney General

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Curt T. Schneider  
Attorney General

June 14, 1977

ATTORNEY GENERAL OPINION NO. 77-197

Mr. Tom Fiegel  
Ness County Attorney  
109 West Main Street  
Ness City, Kansas 67560

Re: Counties--Roads--Adverse Possession

Synopsis: A private individual may not obtain title to public roads or highways by adverse possession.

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Dear Mr. Fiegel:

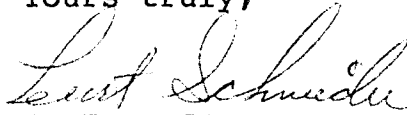
You advise that a road in Ness County was opened pursuant to a petition which was filed in 1906. Although the road has not been maintained for the past 25 years, it has not been closed by the board of county commissioners. You indicate that in 1959, an easement was given to a power company by an adjoining landowner, pursuant to which the company has erected poles and strung wires down the center of the road. You question whether the easement is valid, because the road was never closed.

The right of the public to a road which is dedicated to public use cannot be barred by adverse possession or the acquiescence of county officials. See, e.g., *Wallace v. Cable*, 87 Kan. 835, 127 P. 5 (1912), and authorities cited therein. "[T]he general rule is that a private individual cannot obtain title to a public highway by adverse possession." *Kollhoff v. Reno County Board of County Commissioners*, 193 Kan. 370, 394 P.2d 92 (1964). Thus, it appears that the adjoining landowner could acquire no title by adverse possession to the road which would support the grant

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of an easement by such landowner to a third party to use the road for the erection of poles and stringing of power lines.

Yours truly,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj