



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 5, 1978

ATTORNEY GENERAL OPINION NO. 78- 147

Mr. Melvin M. Gradert
County Administrator
Harvey County Courthouse
Newton, Kansas 67144

Re: Townships--Road Overseer--Appointment

Synopsis: Only the township board, with the consent of the county engineer, is authorized to appoint a township road overseer. The trustee, acting alone under K.S.A. 80-301, Second, has no such authority.

* * *

Dear Mr. Gradert:

You inquire concerning authority for the appointment of a township road overseer.

K.S.A. 80-301 states in pertinent part thus:

"The duties of the township trustee shall be:

* * *

Second. To fill all vacancies in the office of road overseer in his or her township."

On the strength of this statute, it has been suggested that the township trustee has the sole power of appointment.

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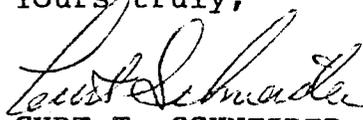
However, K.S.A. 68-530 provides thus:

"That the township board, with the approval of the county engineer, shall appoint, on his merits only, a competent experienced road builder for road overseer for the entire township, who shall have charge of the construction and maintenance of all township roads, bridges, and culverts, under the supervision of the township board and the county engineer. When in the opinion of the county engineer the conditions demand it, the overseer may appoint one or more competent assistants, subject to the approval of the township board: Provided, in any county having a population of ten thousand or less, the township board by unanimous vote may designate the township trustee to act as road overseer or patrolman."

This section was enacted in 1914. K.S.A. 80-301, supra, was enacted in 1868. At that time, township road overseers were elective officers, and the trustee was empowered by the quoted language to fill vacancies in the office when, e.g., the elected overseer died, resigned, or otherwise surrendered or forfeited the office. Under K.S.A. 68-530, township road overseers are no longer elected, but rather are appointed, and that appointive power is vested in the entire board. The person so appointed serves not for a fixed term, but under K.S.A. 68-581, at the pleasure of the township board. Thus, the entire board is empowered both to appoint and to discharge the road overseer. The trustee no longer has authority, acting alone, to fill the position of road overseer. The language of the 1868 act necessarily conflicts with the later enactment, first adopted in 1917, and under accepted rules of statutory construction, the earlier language must be deemed to be impliedly repealed to the extent that it conflicts with later statutory language dealing specifically with the same subject. Under the later enactment, there is no basis for the trustee, acting solely as trustee, to appoint the township road overseer.

Thus, it is my opinion that the power to appoint the township road overseer is necessarily vested in the entire township board, acting with the consent of the county engineer.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj