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August 13, 1979

ATTORNEY GENERAL OPINION NO. 79- 175

Mr. Tom Fiegel
Ness County Attorney
Ness City, Kansas 67560

Re: Roads and Bridges--Laying Out and Opening Roads--
Access to Public Highway by Landlocked Property
Owners

Synopsis: A person who has been granted "permission" to use a private lane as a "means of approaching" a public highway has, within the means of K.S.A. 68-117, been provided access from such person's land to the public highway. Thus, as long as this access continues such person is not landlocked and is not entitled to petition the board of county commissioners for a road from the public highway through the adjoining lands to such person's property.

* * *

Dear Mr. Fiegel:

You inquire whether a landlocked property owner who has received oral permission from adjoining property owners to use a private lane leading to a public highway has access to the public highway and is therefore precluded from petitioning the board of county commissioners for the construction of a road through some portion of the adjoining lands.

The statutory provision which authorizes a landlocked property owner to petition the board of county commissioners for a road through some portion of adjoining lands is K.S.A. 68-117, which provides in part:

"Whenever the premises of any person shall be so completely surrounded by adjoining lands, the property of others . . . as to be without access to any public highway, then such person may petition the board of county commissioners of the county in which such premises lie for a road, and one road only, through some portion of the adjoining lands." (Emphasis added.)

From the foregoing provision, it is clear that the legislature has vested power in the board of county commissioners to permit the taking of another's land for the purpose of providing landlocked property owners with ready access to a public highway. However, in McCluggage v. Loomis, 176 Kan. 318, 323 (1954), the Kansas Supreme Court states that,

"[t]he statute declares the precise conditions under which a person is permitted to petition the board of county commissioners for a road [and] [c]ounty commissioners and courts are without authority or power to substitute their own conditions therefore or to read exceptions into the statute." (Emphasis supplied by the Court.)

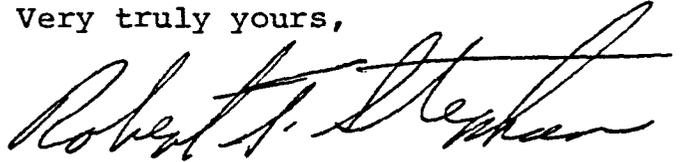
In our opinion a landlocked property owner must be without access to a public highway before such person may petition the board of county commissioners for a road through adjoining lands. The question then becomes whether permission given to a landlocked property owner, by adjoining property owners, to use a private land leading to a public highway constitutes access to the public highway.

One rule of statutory construction consistently applied by the Kansas Supreme Court in determining legislative intent is that words are to be given their ordinary meanings in the English language. Lakeview Gardens, Inc. v. State, ex rel. Schneider, 221 Kan. 211 (1976); Hessell v. Lateral Sewer Dist. No. T-39, 202 Kan. 499 (1960); and Roda v. Williams, 195 Kan. 507 (1965). In addition, K.S.A. 77-201, Second, in part, provides: "Words and phrases shall be construed according to the context and approved usage of the language" Following these rules, it is noted that Webster's New Collegiate Dictionary 5 (1965) defines "access" as "permission, liberty, or ability to enter, approach, communicate with, or pass to and from or to make use of." (Emphasis added.) Also, Black's Law Dictionary 2 (1957) defines "access" as "[a]pproach; or the means, power, or opportunity of approaching." (Emphasis added.)

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Applying the foregoing to your inquiry, it is our judgment that a person who has been granted "permission" to use a private lane as a "means of approaching" a public highway has, within the meaning of K.S.A. 68-117, been provided access from such person's land to the public highway. Thus, as long as this access continues, such person is not landlocked and is not entitled to petition the board of county commissioners for a road from the public highway through adjoining lands to such person's property.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



ALICE L. RAWLINGS
Deputy Attorney General

RTS:ALR:bjh