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October 3, 1980

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ATTORNEY GENERAL OPINION NO. 80- 218

Mr. James W. Pattinson
Assistant Sedgwick County Counselor
Sedgwick County Courthouse, Suite 315
Wichita, Kansas 67203

Re: Roads and Bridges--County and Township Roads--Designation
of Streets and Roads as Arterial Highways and Financing
Improvements Therefor

Synopsis: The legislature has not established any standards or
criteria for designation of county roads as "primary
arterial highways" pursuant to K.S.A. 1979 Supp. 68-581.
Thus, such designation is left to the sound discretion
of the board of county commissioners, limited only by
the definition of that term according to its context and
approved usage. Cited herein: K.S.A. 8-1403, K.S.A.
1979 Supp. 68-581, 68-584, K.S.A. 68-585.

* * *

Dear Mr. Pattinson:

On behalf of the Sedgwick County Board of County Commissioners,
you inquire under what circumstances may a board of county commissioners
designate a portion of an existing county road a "primary arterial
highway," as that term is used in K.S.A. 1979 Supp. 68-581, in order to
proceed with issuance of bonds, pursuant to K.S.A. 1979 Supp. 68-584,
to finance improvements of said road? You advise that certain roads
in Sedgwick County are in need of repairs beyond the resources of
the current road and bridge funds, repairs needed to insure the
continued safety of the travelling public and to prevent further
deterioration of the road base. The board of county commissioners
wishes to issue bonds to finance those improvements under K.S.A.
1979 Supp. 68-584, if the county is authorized to do so under K.S.A.
1979 Supp. 68-581.

The legislature has not established any standards or criteria for designation of county roads as primary arterial highways. The statute in question merely provides, in pertinent part, as follows:

"By resolution the board of any county may designate as a primary arterial highway: (1) All or any portion of an existing or proposed new county road or highway; or (2) all or any portion of an existing or a proposed new street within a city in such county which is or would be an extension of a county road or a connecting link between county roads. Such resolution shall set out the primary arterial highway designation and its location, a general description of the proposed improvement and an estimate of the total cost thereof, exclusive of any grants from any other public agency. Upon the adoption of such resolution, a copy thereof attested by the county clerk shall, if such designation is of a city street, be transmitted to the city clerk of each city wherein such primary arterial highway is located or is proposed to be located. The resolution shall become effective upon publication by the county in its official newspaper." K.S.A. 1979 Supp. 68-581.

It is clear that the county may designate all or any portion of an existing county road or highway as a "primary arterial highway." The term "primary arterial highway" is not defined in the statute, however, and we find little in the statute by which the board of county commissioners may be guided in the exercise of its authority under this section. We note that the term "arterial street" is defined in K.S.A. 8-1403 as "any U.S. or state numbered route, controlled access highway or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways." (Emphasis added.) Unfortunately, that definition adds little to our understanding of the meaning of the term "primary arterial highway" as it used in 68-581, or as to how or under what circumstances a road may be so designated.

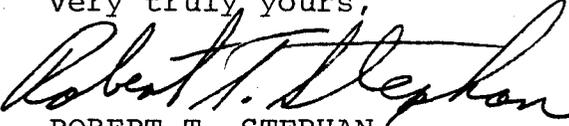
Enjoined by K.S.A. 77-201, Second to look to the "context and the approved usage of the language" in the statute to determine its meaning, we note that "arterial," in this context, is generally defined as "of, relating to, or constituting through-traffic facilities," and as a "through street or arterial highway." Webster's Third New International Dictionary (Unabridged Ed., 1966), p. 123. An "artery" is defined, in this context, as a "channel of transportation" or "a principal street or road." Id. (Emphasis added.) "Primary" is defined as "first in rank or importance; . . . chief; . . . principal; . . . something that stands first in order, rank or importance." Id. at p. 1800.

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Thus, we think it clear that the county's designation of roads as "primary arterial highways" must be limited to those county roads of greater importance, presumably those most heavily travelled.

The matter of designation of county roads as "primary arterial highways" is, in our judgment, left to the sound discretion of the board of county commissioners, limited only by the admittedly broad definitions of terms noted above. In addition, K.S.A. 68-585 authorizes the county to make engineering studies "to determine the feasibility of any primary arterial highway, secondary arterial highway or county road program," which may, in some measure, guide the board in its exercise of authority to designate "arterial" roads under the statute in question.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:BJS:SC:phf