



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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July 16, 1981

ATTORNEY GENERAL OPINION NO. 81- 162

Mr. Eldon Wuthnow
Clerk, Banner Township
Dickinson County
Route 2
Hope, Kansas 67451

Re: Roads and Bridges -- Laying Out and Opening
Roads -- Duty of County Attorney to Township

Synopsis: A county attorney has no duty to act on behalf of a township board and seek vacation or closure of a township road pursuant to K.S.A. 68-102. Cited herein: K.S.A. 68-102, 80-304, 80-306.

* * *

Dear Mr. Wuthnow:

You ask whether the county attorney has any obligation to assist the township board with a request that a road, located in and controlled by the township, be vacated pursuant to K.S.A. 68-102. This statute states in pertinent part:

"Applications for laying out roads, or for viewing, reviewing, altering or vacating any road, shall be by petition to the board of county commissioners, signed by at least twelve (12) householders of the county residing in the vicinity where said road is to be laid out, viewed, reviewed, altered or vacated . . . Provided, That in counties having a population of not more than ninety thousand (90,000) and not less than twelve hundred

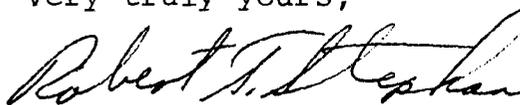
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(1,200) inhabitants, the board of county commissioners are hereby given authority to vacate any road of such county without such petition . . . when, in their judgment, said road is not a public utility by reason of neglect, nonuse, or inconvenience or from other cause or causes said road has become practically impassable and the necessity for said road as a public utility does not justify the expenditure of the necessary funds to repair said road or put the same in condition for public travel"

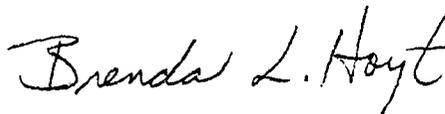
This statute provides the procedures to be followed by the county commissioners in opening or vacating a road. It does not require the county attorney to assist in this procedure in any way beyond acting as legal counsel to the board of county commissioners, nor does it establish a separate procedure which is applicable to township boards. Thus, the county attorney would have no duty to intervene on behalf of a township to obtain vacation of a road.

The duties a county attorney has to a township are found in K.S.A. 80-304 and 80-306. K.S.A. 80-304 requires the county attorney to prosecute any suits brought to recover township funds allowed or paid in excess of the legally authorized amount. K.S.A. 80-306 requires the county attorney to prosecute violations of various road laws.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:hle