



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

August 21, 1981

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 81- 197

Quinten E. Hobbs, Trustee
Grove Township Board
Turon, Kansas 67583

Re: Roads and Bridges -- County and Township Roads --
Regulation of Traffic by Local Authorities

Synopsis: In order to prevent damage to roads under their jurisdiction, local authorities may, pursuant to K.S.A. 8-1912(c), impose limits as to the weight or size of vehicles which may be operated thereon. Such limits become effective through the posting of signs [K.S.A. 8-1912(b)], and if violated, can result in a civil action to recover damages. While a non-urban township board is given the general charge and supervision over roads within the township, it is not a "local authority" so as to impose such limits on vehicular use of township roads. Cited herein: K.S.A. 8-5,123, 8-1432, 8-1912, 8-1913, 65-524, and 80-2307.

* * *

Dear Mr Hobbs:

As Trustee for Grove County Township in Reno County, Kansas, you request the opinion of this office on a question involving the use of township roads by large vehicles. Specifically, you inquire whether the use of township roads by such vehicles may be limited or prohibited, in that they cause significant damage in the form of ruts and potholes.

It is clear from Kansas statutory and case law that the use of public roads may be regulated by local governments. The current legislative pronouncement on this subject is found at K.S.A. 8-1912, which states in pertinent part [at subsection (c)]:

"Local authorities with respect to highways under their jurisdiction also, by ordinance or resolution, may prohibit the operation of trucks or other limitations as to the weight or size thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways: Provided, That adjacent premises to such restricted streets may be served, and such restrictions shall not apply to any street which is a connecting link of the state highway system, unless a satisfactory alternate route is provided and has been approved by the secretary of transportation." (Emphasis added.)

It may be noted that, in its original form as K.S.A. 8-5,123, the statute provided only for the regulation and not the prohibition of vehicular traffic, a fact which led to the striking down of at least one local attempt at prohibition. Ash v. Gibson, 146 Kan. 756 (1937). However, such deficiencies were remedied in 1955, when local authorities were given the express power to prohibit certain types of traffic altogether on designated highways (L. 1955, ch. 59, §1). The reasonable use of this power has been approved in two recent opinions of this office. Attorney General Opinion Nos. 76-293; 80-20.

Such restrictions are imposed by means of signs which provide notice of the restriction or prohibition and which are posted at either end of that portion of the road which has been so designated [K.S.A. 8-1912(b)]. The resolution or ordinance is not effective until such notice is posted. Once this is done, however, a driver who violates the limits is liable for all damages which the road may sustain as a result of his action (K.S.A. 8-1913).

Therefore, the question becomes one of whether a township may itself enact such restrictions. Although you do not so state, we presume from your request that Reno County has not enacted a county unit road system, thus leaving "the general charge and supervision of all township roads" in the hands of the township board (K.S.A. 65-526). That body, comprised of yourself as trustee, plus the township clerk and treasurer, has the responsibilities of opening, constructing, maintaining, repairing and improving township roads -- all duties given it by the legislature. Clay Township v. Pebley, 207 Kan. 59 (1971).

However, due to the way in which we are required to read K.S.A. 8-1912, it would be our opinion that Grove Township is not empowered to enact restrictions on vehicular traffic on township roads, but rather must request the county to

Quinten E. Hobbs
Page Three

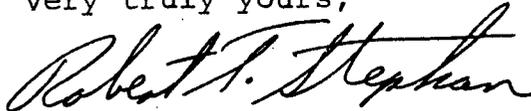
take such action. We base this conclusion on the language of K.S.A. 8-1912, which, as quoted above, empowers "local authorities" to take action. That phrase is defined at K.S.A. 8-1432, which is part of the same act and therefore controls. Therein, it is stated:

"'Local authorities' means the Kansas turnpike authority and every city, county and other local board or body having authority to adopt ordinances or regulations relating to vehicular traffic under the constitution and laws of this state." (Emphasis added.)

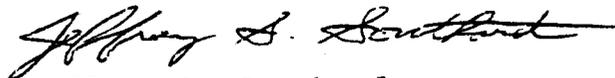
While "urban class townships" possess the power "to regulate the use of streets, roads and highways within the township" (K.S.A. 80-2307), upon examining the Kansas Constitution and the relevant statutes, we are unable to find any such authority vested in townships such as Grove, i.e., non-urban townships. Accordingly, Grove Township is not a local authority for purposes of K.S.A. 8-1912(c), and so cannot itself regulate or prohibit the movement of heavy vehicles over township roads. An analogous conclusion was reached in Attorney General Opinion No. 79-272, where a non-urban township sought to regulate the speed of vehicles on township roads.

In conclusion, in order to prevent damage to roads under their jurisdiction, local authorities may, pursuant to K.S.A. 8-1912(c), impose limits as to the weight or size of vehicles which may be operated thereon. Such limits become effective through the posting of signs [K.S.A. 8-1912(b)], and if violated, can result in a civil action to recover damages. While a non-urban township board is given the general charge and supervision over roads within the township, it is not a "local authority" so as to impose such limits on vehicular use of township roads.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle