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ATTORNEY GENERAL OPINION NO. 81- 234

Samuel L. Schuetz  
Brown County Attorney  
County Courthouse  
Hiawatha, Kansas 66434

Re: Roads and Bridges -- Bridges -- Maintenance of  
Culverts on Township Roads

Synopsis: K.S.A. 68-1107 places the duty on the county engineer to determine the size of culverts required for a particular location on a township road. Pursuant to this statute, such determination has the effect of assigning to either the township or county the duty of constructing, reconstructing, repairing and maintaining any such culvert. Absent a determination by the county engineer that an existing "county culvert" should be reconstructed to a reduced size, so as to constitute a "township culvert," the county may not so reconstruct such culvert and thereby shift to the township the duty of maintaining the reconstructed culvert. Cited herein: K.S.A. 68-1104, 68-1107.

\* \* \*

Dear Mr. Schuetz:

You ask for clarification of K.S.A. 68-1104. Apparently, Brown County has installed culverts on certain township roads to replace county bridges. The culverts presently have openings of 25 square feet or more and are, therefore, "county culverts" as defined in K.S.A. 68-1107(c). You ask, if the existing culverts are replaced by the county with culverts having openings of less than 25 square feet, whether the culverts will become "township culverts," falling within the definition of K.S.A. 68-1107(d), thereby shifting maintenance tasks to the township. K.S.A. 68-1104 provides thus:

"The board of county commissioners shall construct, reconstruct, repair and maintain all county bridges and county culverts located on county roads and township roads and the cost of such work shall be paid from the bridge fund of the county. All township culverts shall be constructed, reconstructed, repaired and maintained by the township board of highway commissioners and the cost of such work shall be paid from the road fund of the township. Except as hereinafter provided, all approaches to culverts and bridges on township roads shall be constructed, reconstructed, and maintained by the township board of highway commissioners and the cost of such work shall be paid from the road fund of the township, except that where the payment of the costs of constructing such approaches has been authorized by a majority vote of the electors of the county in which such township is located prior to the effective date of this act, said cost of construction shall be paid from the county's bridge fund, within the limit of moneys authorized by such election. The board of county commissioners may elect to pay, from the bridge fund of the county, for the construction, reconstruction or maintenance of any approach to a culvert or bridge on a township road, in which event the township board of highway commissioners shall not be responsible therefor." (Emphasis added.)

The definitions of county culverts and township culverts are stated in K.S.A. 68-1107(c) and (d) as follows:

"(c) all culverts located on township roads with a required opening of twenty-five (25) square feet or more, as determined by the county engineer, shall be known as 'county culverts';

"(d) all culverts located on township roads having a required opening of less than twenty-five (25) square feet, as determined by the county engineer, shall be known as 'township culverts.'"

To determine whether a county culvert may become a township culvert by the county changing the size of the culvert, we must look to the rules of statutory construction since we know of no Kansas cases resolving this issue.

"A primary rule for the construction of a statute is to find the legislative intent from its language, and where the language used is plain and unambiguous and also appropriate to an obvious purpose, the court should follow the intent as expressed by the words used." Underwood v. Allmon, 215 Kan. 201, 204 (1974). By the clear language of K.S.A. 68-1107(c) and (d), the county engineer is to determine whether culvert openings on township roads are to be at least 25 square feet or larger. The statute refers to a "required opening," thereby indicating that the legislature intended for the county engineer to consider how large an opening would be necessary for a particular culvert to adequately handle whatever water or run-off might exist or occur in that spot. Once such determination is made, a particular spot will be designated for the installation of a culvert to be identified as either a "county culvert" or a "township culvert."

Hence, by the language of the statute the decision as to the size of a culvert is delegated to the county engineer. It is the clear legislative intent that the decision as to size of the culvert is to be based on technical, scientific and professional considerations. If the decision is made by the county engineer that a large county culvert is no longer necessary and a smaller culvert would be sufficient, the initial construction and maintenance of such culvert becomes the responsibility of the township.

K.S.A. 68-1104 also contains clear and unambiguous language. Said statute directs the board of county commissioners to construct, reconstruct, repair and maintain all county culverts located on township roads, and directs the township board of highway commissioners to construct, reconstruct, repair and maintain township culverts. Because 68-1104 and 68-1107 are parts of the same act, they must be construed in pari materia. See, Brown v. Keill, 224 Kan. 195 (1975).

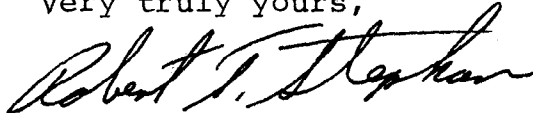
Read together, it appears that once the county engineer has determined how large a culvert is needed at a particular spot, it is up to the governing body responsible for that size culvert to construct and maintain the culvert. By limiting the determination of whether a culvert is to be the responsibility of the county or the township solely to the size of the culvert, the legislature apparently intended the larger and more expensive projects to be the responsibility of the county which, presumably, is financially more able to bear the higher costs of construction and maintenance than is the township with its limited taxing authority. To allow the county to shift the maintenance burdens to the township without requiring the county engineer to first determine that the smaller culvert was sufficient would permit the county to circumvent the intent of the legislature in its distribution of maintenance costs.

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Although we do not conclude that a county culvert must forever remain a county culvert, in our opinion, ownership of a culvert cannot change absent a determination by the county engineer that a different size culvert is required.

Thus, in our opinion, the county may not simply replace large culverts with smaller culverts and for the sole purpose of shifting the maintenance responsibilities to the township. Before construction and maintenance duties regarding a county culvert may be transferred to a township, the county engineer must determine that a smaller culvert is required in a particular location; if no such determination is made, the county may not impose maintenance duties on the township by arbitrarily changing the size of the culvert.

Very truly yours,



ROBERT T. STEPHAN  
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RTS:BJS:BLH:hle