



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 81-256

Mr. Leonard L. Buddenbohm
Atchison County Counselor
109 North Sixth Street
Atchison, Kansas 66002

Re: Roads and Bridges -- Bridges; General Provisions --
Conveyance of Unsafe Bridge

Synopsis: A bridge located on a vacated county road in which the county had held only an easement for a public road reverts to the adjoining landowners at the time of vacation. If the bridge was declared unsafe prior to vacation of the road, the provisions of K.S.A. 68-1126 must be honored. However, once a road and bridge have been vacated and have reverted to the adjoining landowners, the county has no continuing exposure to tort liability for injuries caused to persons injured while using such vacated roadways and bridges. Cited herein: K.S.A. 68-1126, K.S.A. 1980 Supp. 75-6101, 75-6103.

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Dear Mr. Buddenbohm:

You state that Atchison County has closed a bridge pursuant to K.S.A. 68-1126, declaring said bridge to be unsafe. You advise that subsequently the road leading up to the bridge was vacated by the county and ownership of the road has reverted to a landowner. You ask whether the county may convey the bridge to the landowner in its unsafe condition and what liability might the county incur if the bridge, after such conveyance, were to collapse while being used by a citizen.

We first note that your inquiry assumes that the ownership of the bridge has remained in the county, even though the road on both approaches to the bridge has been vacated. Since the road has reverted to the landowner, we may assume the

county had previously acquired only an easement in the property rather than title in fee. See generally Attorney General Opinion No. 79-234. While there is apparently little case law which specifically addresses the ownership of a bridge upon vacation of the road or highway of which the bridge is part, there is a Wisconsin case which does so. In Carpenter et al. v. Town of Spring Green, 285 N.W. 409 (1939), a highway containing a bridge which had originally belonged to the town of Spring Green had been made part of the state highway system, then part of the U.S. highway system. The United States relocated the highway, abandoning the portion in Spring Green with ownership reverting to the town. The town subsequently discontinued the highway and contracted to sell the bridge materials. The court held that when the highway was discontinued, the bridge structure became the property of the adjoining landowners since the highway did so pursuant to statute. The court, in rejecting the notion that the bridge belonged to the town, said:

"By virtue of the provisions of sec. 80.32(3), at the moment when the highway in question became effectively discontinued, it belonged to the owners of the adjoining lands. In order to uphold the judgment of the circuit court [which had ruled in favor of the town] we should have to say that whenever a highway is discontinued it should be broken up into its component parts, -- land, grading and bridges --, and hold that only the land and grading belong to the adjoining owners and that the bridges, which immediately theretofore were a part of the highway, belong to the town. We cannot read out of the plain words of the statute of such a construction." Id. at 411.

Kansas has no such statute but does have case law concluding that a bridge is part of a road. See, Noblit v. Board of County Commissioners, 190 Kan. 586 (1962) (defects in roadbed and guardrail of bridge constituted a defect in a highway for purposes of recovering damages); Dubourdieu v. Delaware Township, 106 Kan. 650 (1920) (statute regarding defects in bridges, culverts and highways held to contain only one subject and therefore, constitutional because a bridge is part of a highway). The Wisconsin and Kansas cases are consistent with the generally accepted common law rule that a bridge is a part of a highway. 11 C.J.S. Bridges §3 (1938); 39 Am.Jur.2d Highways, Streets and Bridges, §11 (1968). We believe the Wisconsin decision is reasonable and that the Kansas courts would also conclude the adjoining landowner is already the owner of the now-vacated bridge; therefore, no conveyance from the county is necessary.

Assuming that you are concerned with determining the potential tort liability to the county should the bridge collapse, causing injury to third parties who may subsequently attempt to use the bridge, we look to the Kansas Tort Claims Act, K.S.A. 1980 Supp. 75-6101 et seq. Said act states the circumstances under which a governmental entity may be held liable in tort. K.S.A. 1980 Supp. 75-6103 states in pertinent part:

"Subject to the limitations of this act, each governmental entity shall be liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment under circumstances where the governmental entity, if a private person, would be liable under the laws of this state."

For a private person to be liable in tort, a plaintiff must suffer an injury which arises from the individual's breach of a duty owed to the plaintiff. 74 Am.Jur.2d Torts §9 (1974). See also, Murray v. Modoc State Bank, 181 Kan. 642 (1957). If no duty is breached, no liability can arise. The owner of property has certain duties to others regarding the use of his property. 57 Am.Jur.2d Negligence §37 (1971). In our opinion, once the ownership of the road reverts to the adjoining landowners, the duties regarding the property would also revert to the landowners and the county's duties would generally be extinguished. The county's duty to the landowners would be to inform them of the condition of the bridge at the time the title passed to the landowners, i.e., at the time the vacation proceedings are completed. 65 C.J.S. Negligence §93 (1960). Once that has been done, the county will have no further duty to third parties regarding the use of the bridge, and will not, therefore, be subject to liability for subsequent injuries resulting from said use.

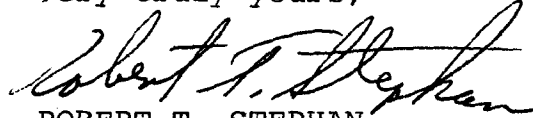
K.S.A. 68-1126 requires the county engineer to take certain actions regarding an unsafe bridge located on a county or township road. If the bridge was condemned prior to the vacation of the road, as we have assumed, the county engineer must have already acted in accordance with the provisions of K.S.A. 68-1126, a statute requiring the posting of notices of the unsafe conditions. However, if the road is vacated prior to determination of the safety of the bridge, the bridge becomes private property and 68-1126 is no longer applicable. We find no Kansas cases which impose continuing duties on the county regarding vacated roads or bridges.

For purposes of public safety, we would advise the county to remove all county signs from the road and bridge. In addition, the county should post signs where the now private road

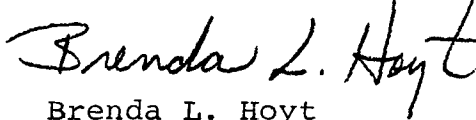
intersects with public roads informing the public that the county no longer maintains said road. Likewise, the landowner would be well-advised to post conspicuous signs at each end of the bridge warning third persons that the bridge is unsafe for travel. 65 C.J.S. Negligence §93 (1966).

In summary, it is our opinion that a bridge located on a vacated county road in which the county had held only an easement for a public road reverts to the adjoining landowners at the time of vacation. If the bridge was declared unsafe prior to vacation of the road, the provisions of K.S.A. 68-1126 must be honored. However, once a road and bridge have been vacated and have reverted to the adjoining landowners, the county has no continuing exposure to tort liability for injuries caused to persons injured while using such vacated roadways and bridges.

Very truly yours,



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