



STATE OF KANSAS

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September 27, 1985

ATTORNEY GENERAL OPINION NO. 85- 132

Jon C. Christlieb  
Aubry Township Trustee  
17595 Mission Road  
Stilwell, Kansas 66058

Re: Roads and Bridges -- County and Township Roads --  
County Road Unit System; Effect on Townships

Synopsis: The county road unit system is one of two alternative systems in Kansas designed for the construction and maintenance of roads within a county. Upon adoption of the county road unit system, all townships within the county must relinquish to the board of county commissioners all money and equipment accumulated by the townships for use in constructing and maintaining roads; the townships additionally relinquish their powers and duties associated with the construction and maintenance of roads within the township. The board of county commissioners is thus charged with the establishment, laying out and opening of all roads which are deemed by the board to be practicable, necessary for public use, and economically feasible, as well as their maintenance. Cited herein: K.S.A. 68-101; 68-104; 68-106; 68-515b; 68-516; 68-516a; 68-516b; K.S.A. 1984 Supp. 68-526.

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Dear Mr. Christlieb:

As Township Trustee for Aubry Township, you request our opinion with respect to the effect of the county road unit system on townships within a county adopting such system. Specifically, you inquire (1) who, as between the township and the county, has authority to open roads within a township; (2) whether the entity having authority to open roads is obligated to do so; and (3) whether the fact that the roads in question are section line roads would alter the answers to the first two questions.

In your letter, you indicate that Johnson County, Kansas has adopted the county road unit system. Aubry Township is located in Johnson County. K.S.A. 68-515b through 68-518 set forth the procedures for the adoption, application and abandonment of the county road unit system. Upon adoption of the system, all townships within the county are to relinquish to the board of commissioners all money and equipment accumulated by them for road construction and maintenance purposes. K.S.A. 68-516a and 68-516b. Thereafter, townships within counties adopting the county road unit system have no further authority to construct or maintain any roads, even those within the boundaries of the township. See also K.S.A. 1984 Supp. 68-526.

K.S.A. 68-516 [particularly when compared with K.S.A. 68-101(4) and (5)], indicates that counties under the county road unit system have abolished the classification of "township roads." As townships have authority to open only township roads (K.S.A. 68-115), under the county road system, it appears that townships have no authority to open roads. In any event, even if a township could open a road simply by declaring it to be open, the township would have no authority to construct or maintain it, leaving the act of opening futile. Thus, it is our opinion that a county operating under the county road unit system has sole authority to open roads in that county.

Your second question concerns whether a county having sole authority to open roads is obligated to do so. In Moore v. City of Lawrence, 232 Kan. 353, 363 (1982), the court discussed this question as applied to a city charged with the authority to open roads:

" . . . When a road is to be opened, or put in condition for use by the public, is within the discretion of the city's governing body. A city is not required to open all streets which have been formally laid out or dedicated." (Emphasis added.)

K.S.A. 68-106 indicates that the same rule applies to counties under the county road unit system:

" . . . said commissioners shall, if they conclude that said road should be established, altered, or vacated, and no legal objections appear against the same, and they are satisfied that such road will be of public utility, enter an order upon their records that said road, survey and plat be recorded in the office of the county surveyor and from thence forth said road shall be considered a public highway, and the county surveyor shall issue his order to the trustees of the respective townships in which said road is located, directing them to cause the same to be opened for the public travel at the time and in the manner indicated by him; but if the commissioners conclude that such road as applied for is unnecessary or impracticable, then no further proceedings shall be had thereon . . . ." K.S.A. 68-106 (Emphasis added.)

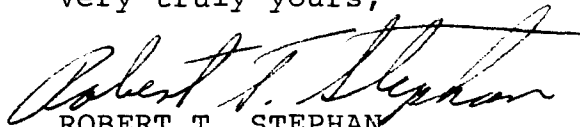
Accordingly, the county is not obligated to open every road, but only those which, in the discretion of the board of county commissioners, are practicable, necessary for public use, and economical. This discretion is not absolute, however. It is tempered by the statutes providing for petition by householders in applying for the opening of roads. K.S.A. 68-102 et seq.

Your final concern is whether the conclusions reached on these points apply to section line roads. It appears that the only statutory distinction between section line roads and other roads appears at K.S.A. 68-104. This section provides that a survey of section line roads may be dispensed with, apparently because section line roads have already been


established by government survey. There is no difference, however, in the procedure for laying out, opening, constructing and maintaining such roads under the county road unit system.

In conclusion, counties operating under the county road unit system have sole authority to open all roads within the county, and have wide, although not unlimited, discretion in determining which roads to open. Section line roads are no different from any other roads for these purposes.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



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