



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 21, 1986

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

ATTORNEY GENERAL OPINION NO. 86- 108

John E. Lang
Pottawatomie County Counselor
Pottawatomie County Courthouse
Westmoreland, Kansas 66549

Re: Roads and Bridges--County and Township Roads;
General County Rural Highway System--Legal
Liability of Townships

Synopsis: When a township transfers all equipment and road funds on hand to the board of county commissioners, pursuant to the adoption of the General County Rural Highway System Act, K.S.A. 68-591 et seq., the county becomes liable for roads which were previously township roads, and the township's liability terminates for incidents occurring after the transition. Cited herein: K.S.A. 68-506, as amended by L. 1986, Ch. 252, §2; 68-591 et seq.; 68-592 as amended by L. 1986, Ch. 252, §4; 68-593; 68-594.

* * *

Dear Mr. Lang:

As Pottawatomie County Counselor, you have requested our opinion concerning the continued liability of townships in a county which has adopted the General County Rural Highway System, K.S.A. 68-591 et seq. You inform us that Pottawatomie has adopted this system. Further, you indicate that all unused or surplus funds held by the townships in Pottawatomie County have been transferred to the county treasurer pursuant to K.S.A. 68-593, and that all equipment

has been transferred to the Board of County Commissioners pursuant to K.S.A. 68-594.

As the individual townships no longer have a duty to construct and maintain roads upon such election and transfer, it is our opinion that the liability of the township terminates at that point. It is fundamental that for negligence to exist, there must be a breach of a duty. If no duty exists, there can be no negligence. Hanna v. Huer, Johns, Neel, Rivers and Webb, 233 Kan. 206, Syl. §5 (1983).

In Irvin v. Garden City Township, 111 Kan. 336 (1922), it was held that in order to hold a township liable for defects in a public road, there must be evidence to show that the road was a township road. Under the General County Rural Highway System Act, all highways are classified as "secondary roads or highways," "county minor collector roads or highways," or "local service roads." K.S.A. 68-592, as amended by L. 1986, Ch. 252, §1. There is no classification of "township road" under the Act, unlike the general provisions in K.S.A. 68-506 which classify all other roads as "township or local service roads."

In that the roads are no longer township roads, there is no duty on the part of the township owing to others as far as incidents occurring after the transition are concerned. Therefore, it is our opinion that the township's liability for the roads it previously maintained terminates upon transferring funds and equipment to the county.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm