



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 90- 91

Steven W. Hirsch
Decatur County Attorney
P.O. Box 296
Oberlin, Kansas 67749

Re: Roads and Bridges; Roads -- General Provisions;
Condemnation and Appropriation of Road Materials --
Machinery and Equipment; Rental or Hiring for
Private Use; Supervision by Experienced Operator;
Times for Renting; Charges

Synopsis: K.S.A. 68-141a prohibits a board of county
commissioners or board of township trustees from
renting or hiring machinery or equipment for
private use except when that use is for road
clearing purposes. K.S.A. 68-141b discusses
procedures for the rental or hiring of county
equipment or machinery. These statutes may be read
in harmony, and thus, K.S.A. 68-141b does not
permit the county to take actions that are
prohibited by K.S.A. 68-141a. Cited herein:
K.S.A. 68-141a; 68-141b; 68-141c.

* * *

Dear Mr. Hirsch:

As Decatur County Attorney you request our opinion on the
practice of a county permitting county machinery or equipment
to be rented to or hired by private citizens. You cite K.S.A.
68-141a, 68-141b and 68-141c. You note that with certain
exceptions, K.S.A. 68-141a prohibits the renting or hiring of
county machinery to any person for private use. However, you

also observe that K.S.A. 68-141b provides that equipment may be rented or hired under the supervision of an experienced county employee. You offer two interpretations of these provisions; (1) equipment and machinery can only be used by the county or some other governmental unit or (2) equipment may be rented out to private individuals as long as an experienced employee goes with the equipment. You further state that the concern in this matter arises from a current practice which permits the rental of county equipment and employees to private enterprises or individuals when equipment of that nature is not otherwise available within the county or region.

K.S.A. 68-141a provides:

"No board of county commissioners or board of township trustees shall rent or hire county or township machinery and equipment to residents of the county or township or to any other person for private use, except that any such board may rent or hire such machinery and equipment for private use for road clearing purposes and may make reasonable charges therefor. The board of county commissioners in any county in the state is hereby authorized to rent or hire county machinery or equipment to any township or city located in the county. The township trustees in any township of the state is hereby authorized to rent or hire township machinery or equipment to the county or any city in the county where such township is located." (Emphasis added).

K.S.A. 68-141b states:

"Any machinery or equipment requiring an experienced operator shall be rented or hired only under the supervision of an experienced employee of the county or township. It shall be hired or rented only at such times as it is not being used by the county or township in its own work. The charges for the use of said machinery or equipment shall be sufficient to defray the expense of the county or

township employee operating said machinery or equipment, and the cost of operating said machinery or equipment, together with any charges for additional insurance that the county or township may be called upon to pay for the additional liability assumed. The charges shall be the same to all persons for the use of said machinery and equipment under similar circumstances." (Emphasis added).

K.S.A. 68-141a and 68-141b were both enacted in 1933. The original version of K.S.A. 68-141a clearly permitted the rental or hiring of county and township machinery and equipment by residents of the county. See also Rausch v. Hill, 164 Kan. 505 (1948); Attorney General Opinion No. 76-302. However, L. 1977, ch. 228, § 1 amended K.S.A. 68-141a:

"Section 1. K.S.A. 68-141a is hereby amended to read as follows: 68-141a. ~~That the boards of county commissioners and township trustees in the various counties of the state are hereby authorized to~~ No board of county commissioners or board of township trustees shall rent or hire county and or township machinery and equipment to residents of the county or township or to any other person for private use, except that any such board may rent or hire such machinery and equipment for private use for road clearing purposes and may make reasonable charges therefor. The board of county commissioners in any county in the state are hereby authorized to rent or hire county machinery or equipment to any township or city located in the county. The township trustees in any township of the state are hereby authorized to rent or hire township machinery or equipment to the county or any city in the county where such township is located." (Underscoring indicates new language).

The 1977 amendments did not alter K.S.A. 68-141b and it remains in its original 1933 form.

In construing statutes, it is the duty of the court to reconcile different provisions so as to make them consistent, harmonious and sensible. Matter of Estate of Estes, 239 Kan. 192 (1986). It is presumed that the legislature, in amending a statute, acts with full knowledge and information as to subject matter of a statute, as to prior and existing legislation on the subject of a statute, and as to judicial decisions with respect to prior to existing law. State v. Coley, 236 Kan. 672 (1985). Statutes in pari materia must be read and construed together and, where possible, be construed in harmony to the end that all may be given full force and effect. Burk v. Unified School District No. 329, 646 F.Supp. 1557 (Kan. 1986); State v. Klassen, 242 Kan. 192 (1987). Thus, we must attempt to read the provisions of K.S.A. 68-141a and 68-141b in harmony.

K.S.A. 68-141a clearly prohibits the county from renting or hiring county machinery and equipment to residents or any other person for private use "except that any such board may rent or hire such machinery and equipment for private use for road clearing purposes and may make reasonable charges therefore." (Emphasis added). K.S.A. 68-141a also permits a county to allow other governmental entities to hire or rent its equipment. The 1977 house journal indicates that on March 1, 1977, the newly prohibitive language contained in the proposed amendment to K.S.A. 68-141a included a dollar amount limit and an exception allowing use of county equipment and machinery by private entities for weed control purposes. 1977 House Journal, p. 450. The senate committee on local government did not approve the 1977 bill as proposed by the house committee, but rather, the senate suggested only one exception to the outright prohibition concerning private use; private use of such equipment was permitted for road clearing purposes. The senate version appears to be the form ultimately adopted, and thus, what had been previously authorized by K.S.A. 68-141a (use of county machinery and equipment for private purposes) became prohibited in all but one circumstance.

It is our opinion that both statutes can be read together if K.S.A. 68-141b is interpreted as applicable to those uses permitted pursuant to K.S.A. 68-141a. Those uses include private use for road clearing purposes and use by other governmental entities. K.S.A. 68-141b places additional requirements, restrictions and procedures upon the permissible rental or hiring of county equipment or machinery. K.S.A. 68-141b does not otherwise permit the county to allow private use of county equipment or machinery. Thus, unless the

private use is for road clearing purposes, K.S.A. 68-141a prohibits the rental or hiring of county equipment or machines for private use and K.S.A. 68-141b does not repeal or alter that prohibition.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Theresa Marcel Nuckolls
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