



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

November 8, 1990

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 126

William I. Heydman
Edwards County Attorney
P.O. Box 251
Kinsley, Kansas 67547-0251

Re: Automobiles and Other Vehicles -- Uniform Act
Regulating Traffic; Powers of State and Local
Authorities -- Official Traffic Control Devices;
Placement

Synopsis: A township is not a "local authority" within the
context of the uniform act regulating traffic and
therefore may not lawfully erect a purported
traffic control device. A warning sign erected by
a township in view of any highway which purports to
be or is an imitation of or resembles an official
traffic control device is a public nuisance within
the meaning of K.S.A. 8-1512. A county may
retroactively adopt the placement of a township-
erected warning sign as a traffic control device.
Cited herein: K.S.A. 8-1424; 8-1432; 8-1442;
8-1447; 8-1512; 8-2001; 8-2002; 68-184.

* * *

Dear Mr. Heydman:

As Edwards county attorney, you have requested our opinion
regarding township authority to place large yellow caution
signs along township roads as a response to the problem of
farmers' irrigation rigs spraying water onto the roads.
Specifically, you ask the following questions:

- "1. May a township erect such signs without prior approval from the board of county commissioners?
- "2. Are the signs in question a public nuisance as per K.S.A. 8-1512?
- "3. May the county commission give 'back door' approval for the erection of the signs, even though the signs have already been erected?
- "4. If the signs are proper, are they effective in limiting the liability of townships in cases where accidents occur due to unlawful 'watering' of the roads?"

Since your first and third questions inquire as to the board of county commissioners' approval of these signs, these issues will be addressed together. Pursuant to K.S.A. 8-2001, "local authorities may adopt traffic regulations which are not in conflict with the provisions of this act" (i.e. the uniform act regulating traffic). Furthermore, K.S.A. 8-2002 states that "the provisions of this act shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from . . . (2) regulating traffic by means of police officers or official traffic control devices." Official traffic control devices are defined as "all signs, signals, markings, and devices, not inconsistent with the act, placed or erected by an authority of a public body or official having jurisdiction for the purpose of regulating, warning or guarding traffic." K.S.A. 8-1442. Local authorities are defined as "the Kansas Turnpike Authority and every city, county and other local board or body having authority to adopt ordinances or regulations relating to vehicular traffic under the constitution and laws of this state." K.S.A. 8-1432.

Since a township does not have constitutional or statutory authority to adopt ordinances or regulations relating to vehicular traffic, a township is not a "local authority" and therefore may not lawfully erect a traffic control device, either with or without county approval. A county, however, falls within the definition of "local authority" and could erect such a traffic control device. Therefore, the county could retroactively approve placement of the traffic control sign as a device warning traffic of road conditions.

Your second question inquires whether the sign would be considered a public nuisance per K.S.A. 8-1512. The relevant sections of that statute are stated as follows:

"(a) No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic control device or any railroad sign or signal.

. . . .

"(d) Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice."

Under K.S.A. 8-1447 a township may be considered a "person." Under K.S.A. 8-1424 the road in question would be considered a "highway." Assuming that the device in question "purports to be or is an imitation of or resembles an official traffic control device" it would be considered a public nuisance. However, if the county retroactively would adopt approval of placement of the sign as a county traffic control device, the status of that sign would shift and it would no longer be considered a public nuisance.

Your fourth question concerns the effectiveness of the caution sign in reducing the liability of the township in case of an accident. Since liability is determined on a fact specific basis, it is not possible to speculate on the effectiveness of the sign in reducing liability without a particular factual setting. Generally speaking, however, liability tends to be reduced if one in the position to know of a dangerous condition alerts or warns another of that condition.

It appears as if the root of the entire problem is the hazard caused by water on the roads from the irrigation rigs. This problem could be resolved pursuant to K.S.A. 68-184 by seeking an injunction against sprinkling water from an irrigation system onto a township road. If this were accomplished, there would be no need for the controversial caution sign.

In conclusion, a township is not a "local authority" within the context of the uniform act regulating traffic and therefore may not lawfully erect a purported traffic control device. A warning sign erected by a township in view of any highway which purports to be or is an imitation of or resembles an official traffic control device is a public nuisance within the meaning of K.S.A. 8-1512. A county may retroactively adopt the placement of a township-erected warning sign as a traffic control device.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Camille Nohe
Assistant Attorney General

RTS:JLM:CN:bas