



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91-163

Susan Marshall
Lincoln County Attorney
P.O. Box 389
Lincoln, Kansas 67455

Re: Roads and Bridges; Roads -- County and Township
Roads; County Road Unit System -- Maintenance of
Roads

Synopsis: A road may be a public road if it has been
established and opened pursuant to K.S.A. 68-102
et seq., or if it is declared to be a public
road or highway by the board of county
commissioners pursuant to K.S.A. 68-124. Cited
herein: K.S.A. 68-102; 68-124; 68-516a; 68-516b;
68-526; K.S.A. 1990 Supp. 68-572; K.S.A.
68-5,102; 68-728.

* * *

Dear Ms. Marshall:

As Lincoln county attorney, you request our opinion as to whether the roads located in Wilson lake estates are the responsibility of Lincoln county and if so, what is the extent of the county's responsibility and liability. You also ask whether these roads can be declared minimum maintenance roads.

As way of background, in 1977 the Lincoln county commissioners approved of a plat for Wilson lake estates. The Wilson lake estates resort area was just beginning to develop. Now, you inform us, there are approximately 30-50 homes.

Pursuant to K.S.A. 68-102 et seq., once there is a recordation of the reviewer's report, survey and plat a county road has been established. Attorney General Opinion No. 91-140. Since these items were recorded we believe the roads were established. Furthermore, there is no information that we are aware of that would lead us to believe that the roads are not open.

"As a matter of law, [] a road may be considered open when the way is unobstructed; when it is travelled, however minimally; when it is available for public use." Attorney General Opinion No. 91-140. Since these roads are unobstructed, are able to be travelled on and are used by the public we deem them to be open.

Even if the roads were not "established" correctly, the roads may be public roads pursuant to K.S.A. 68-124:

"Where . . . any road or highway that is not a county road has been declared to be a public road or highway, it shall be the duty of the board of highway commissioners of the township in which such road is located to repair, place and keep in condition for travel such roads or highway. If such board of highway commissioners shall neglect, refuse or fail to comply with the provisions of this act, the board of county commissioners of the county may repair and put in good condition for travel such road or highway, and shall charge the expenses therefor to the township in which such road is located." (Emphasis added).

The plat of the Wilson lake estates which was approved by the Lincoln county commissioners stated that "roads and easements shown on this plat and not heretofore dedicated for public and private use are hereby dedicated for public and private use and may be employed for the purpose of installing, repairing and maintaining all public and private utilities now or hereafter."

Black's Law Dictionary 368 95th Ed. (1979) defines the word "declare" as follows:

"To make known, manifest, or clear. To signify, to show in any manner either by

words or acts. To publish; to utter; to announce clearly some opinion or resolution. To solemnly assert a fact before witnesses."

It is our opinion that when the plat of Wilson lake estates was accepted by the Lincoln county commissioners and was filed, this was sufficient to consider this road "declared" to be a public road as set out in K.S.A. 68-124.

The second part of your question involves the issue of what is the extent of Lincoln county's responsibility and liability in regard to maintaining these roads. You have informed us that Lincoln county has adopted 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. 68-526." Attorney General Opinion No. 85-132.

Therefore, Lincoln county would be responsible for the maintenance of these roads. However, K.S.A. 1990 Supp. 68-572 states that "the board of county commissioners of any county, any township board of highway commissioners of the county or city governing body within such county are hereby authorized to enter into agreements for the construction or maintenance of any roads or streets."

Furthermore, K.S.A. 68-728 provides a procedure for owners of land that is platted, which lies outside the limits of an incorporated city to petition the board of county commissioners to provide for the "construction or reconstruction of the curbing, guttering, paving, macadamizing, or grading, including drainage of any public road outside the limits of any incorporated city whenever it shall deem the same necessary."

Finally, you inquire as to whether these roads can be declared minimum maintenance roads. In determining whether the roads

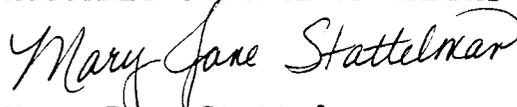
around Wilson lake estates can be declared minimum maintenance roads, the board of county commissioners must first determine whether these roads are "used only occasionally or used only by a few individuals." K.S.A. 68-5,102. If this is the case, then they can commence proceedings pursuant to K.S.A. 68-5,102. It should be noted that on July 1, 1975, the Lincoln county commissioners adopted zoning and sub-division regulations which require the developer of a subdivision to insure that county streets and roadways comply with certain standards which the county states the developer has failed to do so. Any liability by the developer pursuant to this regulation would be actionable by the county.

In conclusion, it is this office's opinion that the roads around the Wilson lake estates are public roads and Lincoln county is responsible for the maintenance of these roads.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelmar
Assistant Attorney General

RTS:JLM:MJS:bas