

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rex Crowell at
Chairperson

2:00 ~~am~~/p.m. on March 6, 1986 in room 519-S of the Capitol.

All members were present except:

Representatives Justice and Snowbarger - Excused.

Committee staff present:

Bruce Kinzie, Revisor of Statutes
Hank Avila, Legislative Research
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Representative Kenneth Francisco
Mr. Arden Ensley

The meeting was called to order by Chairman Crowell and the first order of business was Committee discussion and action on HB-2864 dealing with registration of snowmobiles.

Mr. Bruce Kinzie, Revisors Office, briefed the Committee on an amendment to HB-2864. (See Attachment 1)

A motion was made by Representative Moomaw to adopt the proposed amendment except to increase the registration fee from \$5 to \$10. The motion was seconded by Representative Shore. Motion passed.

A motion was made by Representative Moomaw to recommend HB-2864 as amended favorable for passage. The motion was seconded by Representative Erne. Motion passed.

The next order of business was a hearing on HB-3087 concerning county connecting links and classification of the county road system.

Representative Kenneth Francisco spoke in support of HB-3087.
(See Attachments 2 and 3)

Mr. Arden Ensley briefed the Committee on HB-3087 and said the connecting links which need to be addressed are in the cities under 5,000.

Representative Patrick asked for a definition of the "county unit system". Mr. Ensley said that in a county unit, the county assumes the responsibility for all the roads including what were previously township roads.

The meeting was adjourned at 2:30 p.m.


Rex Crowell, Chairman

Section 1. As used in this act "snowmobile" means a self-propelled ~~device~~^{vehicle} primarily designed or altered for travel on snow or ice when supported in part by skis, belts or cleats.

Sec. 2. (a) From and after January 1, 1987, snowmobiles may, at the owner's option, be registered in accordance with the provisions of this act. The annual registration fee for a snowmobile shall be \$5. The owner shall make application for registration of a snowmobile on a form furnished by the director of vehicles and the annual registration fee for snowmobiles shall be due January 1 of each year and shall be payable on or before February 15, if the owner renews such registration.

(b) The registration number assigned to a snowmobile shall be displayed on the snowmobile at all times in such a manner as the division may prescribe.

(c) Snowmobiles shall be operated in accordance with the provisions of K.S.A. 8-1585, and amendments thereto.

(d) The secretary of revenue shall adopt rules and regulations necessary to provide for the registration of snowmobiles and the display of registration numbers.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

*H. Transp. 3/6/86
Attach. 1*



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 12, 1986

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

The Honorable Ken Francisco
State Representative, 90th District
Capitol Building, Room 281-W
Topeka, Kansas 66612

Dear Representative Francisco:

This is to acknowledge receipt of your letter dated January 28, 1986, regarding the maintenance of county roads that pass through cities. Specifically, you inquire whether a county must maintain these roads in the absence of an interlocal cooperation agreement, or alternatively, whether a county can refuse to maintain these roads if a city refuses to enter into such an agreement.

In a recent Attorney General Opinion, No. 85-172, we stated that counties are primarily responsible for the maintenance of main traveled highways which lie within a city and which connect county roads with the city, although a city is also empowered to aid in the maintenance of such roads. K.S.A. 68-506. We also stated that in the event of a controversy over the maintenance of a county road which passes through a third-class city, and to ensure the most efficient use of public funds, an interlocal agreement apportioning the costs between the county and the city may be formed.

K.S.A. 68-506 provides in relevant part:

"Whenever any main traveled highway is located partly within and partly without a city and connects a county primary road with a city, by and with the consent of the governing body, and with the final approval

*H. Transp. 3/6/86
Attach. 2*

of the secretary of transportation, the board of county commissioners is hereby given power and authority and required to designate such public highway as a part of the county primary road system, and it shall be improved and maintained as other parts of the county primary road system, except that the governing body of such city may aid in the construction, maintenance and improvement of such road as it would were the said highway wholly within the corporate limits of said city." (Emphasis added.)

We find the legislative intent in K.S.A. 68-506 cannot be easily construed from the face of the statute. However, interpreting the statutory language, we conclude that the county is ultimately responsible for the maintenance of a county road. At the same time, fairness would seem to dictate that a city should be required to contribute its fair share toward the expenses involved in the construction, maintenance and improvement of a county road which passes through the city, since city residents would be the primary users of such a road. Hence our recommendation for the use of an interlocal cooperation agreement between the two entities, which would apportion the costs fairly between the county and the city.

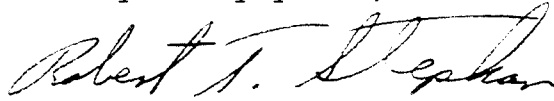
To answer your specific questions, based on the present language in K.S.A. 68-506, we find a county must maintain county roads that pass through cities, even in the absence of an interlocal cooperation agreement. Stated a different way, if a city refuses to enter into an interlocal cooperation agreement, the statute still places the responsibility for maintenance of county roads on the county. We note in this regard that many cities of the second and third class do not have the personnel and/or equipment to properly maintain a county road, even if they have the desire to do so. Of course, this does not mean they should receive said services for free, but rather they should pay the county to provide such services at a fair price.

This result may be potentially harsh on a Kansas county, for if a city refuses to contract with a county for the performance of road maintenance work, the county must still maintain the road. However, our interpretation of the legislative intent in K.S.A. 68-506 necessarily mandates that we reach this conclusion. As a member of the legislature, you may wish to initiate action to remedy this problem during the 1986 legislative session.

The Honorable Ken Francisco
Page 3

Thank you for your inquiry. Please feel free to contact me in the future if I can be of additional assistance on this or any other matter.

Very truly yours,

A handwritten signature in cursive script, reading "Robert T. Stephan". The signature is written in dark ink and is positioned above the printed name.

ROBERT T. STEPHAN
ATTORNEY GENERAL

RTS:crw



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 12, 1985

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

ATTORNEY GENERAL OPINION NO. 85- 172

The Honorable William M. Bryant, D.V.M.
State Representative, Sixty-Third District
Rural Route 2
Washington, Kansas 66968

Re: Roads and Bridges -- County and Township Roads --
Classification and Designation of Roads in a
Non-County Road System

Synopsis: A county is primarily responsible for the maintenance of main traveled highways which lie within a city and which connect county primary roads with the city, although a city is also empowered to aid in the maintenance of such roads. K.S.A. 68-506. Thus, in the event of a controversy over the maintenance of a county road which passes through a third-class city, and to ensure the most efficient use of public funds, an interlocal agreement apportioning the costs between the county and the city may be formed. Cited herein: K.S.A. 12-2901; 12-2904; 12-2905; 12-2907; 68-169; 68-506; 68-506e; 68-572; 79-2925; L. 1967, ch. 354.

* * *

Dear Representative Bryant:

As State Representative for the 63rd District, you request our opinion as to who is responsible for the maintenance of a public road. Specifically, you inquire as to which governmental entity has the primary responsibility for maintenance of a county road which passes through a third class city, and to what extent, if any, the county is responsible to the city for road maintenance.

*H. Transp. 3/6/86
Attach. 3*

You inform us that Washington County intends to pay the City of Haddam (a city of the third class) the amount of \$250 per mile per year for the maintenance of those streets in Haddam which are part of the county connecting link system. Initially, it may appear that this arrangement is authorized by K.S.A. 68-506e, which states:

"The board of county commissioners of each county shall annually apportion and distribute quarterly to each city on the county highway system from the fund known as the county and township road fund at the rate of two hundred fifty dollars (\$250) per mile for the maintenance of the streets in such cities used as connecting links in the system of county highways which are not connecting links in the state highway system, said moneys to be credited to the street and alley fund of such cities. In lieu of said apportionment the board of county commissioners may maintain in cities of the third class such streets and pay for such maintenance from the county and township road fund."

However, this statute is no longer meaningful to the issue at hand, in that K.S.A. 68-416(b)(1) provides: "The fund known as the 'county and township road fund' is hereby abolished" Thus, this provision of K.S.A. 68-506e is not relevant since the county and township road fund no longer legally exists. However, as you note in your letter, the county is authorized to pay a city \$250 per mile, or more or less, under the county's home rule authority. We agree with this interpretation.

A more applicable statute, K.S.A. 68-506, provides in relevant part:

"Whenever any main traveled highway is located partly within and partly without a city and connects a county primary road with a city, by and with the consent of the governing body, and with the final approval of the secretary of transportation, the board of county commissioners is hereby given power and authority and required to designate such

public highway as a part of the county primary road system, and it shall be improved and maintained as other parts of the county primary road system, except that the governing body of such city may aid in the construction, maintenance and improvement of such road as it would were the said highway wholly within the corporate limits of said city." (Emphasis added.)

As we interpret this statute, the county is primarily responsible for the maintenance of those "main traveled highways" which lie within a city and which connect a county primary road with the city. See, e.g. City of Independence v. Montgomery County Comm'rs, 140 Kan. 661 (1934). At the same time, however, under county home rule, a board of county commissioners has wide discretion as to how it will distribute its annual budget. Thus, in the event of a controversy over the maintenance of a county road which passes through a third class city, and to ensure the most efficient use of public funds, an interlocal agreement apportioning the costs between the county and the city may be formed. K.S.A. 12-2901 et seq.

Regarding such agreements, K.S.A. 12-2901 states:

"It is the purpose of this act to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities, persons, associations and corporations on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities."

K.S.A. 12-2904 goes on to say:

"(b) Any public agency may enter into agreements with one or more public or private agencies for joint or cooperative action pursuant to the provisions of this act."

Under such an agreement, which the county counselor would be able to prepare, the city could contract with the county for performance of road maintenance work.

Earlier this year, Attorney General Opinion No. 85-57 addressed the related issue of whether a township could utilize revenue produced by taxes levied for road maintenance to contract with a county, under the terms of an interlocal agreement, for the performance of road maintenance work. As in the situation at hand, the county was not under the county road unit system. A number of the smaller townships were either unable or unwilling to maintain their roads, and the county was interested in relieving them of this obligation. The opinion concluded that an interlocal agreement between the county and each one of the townships which desired the county to maintain its roads would be possible under K.S.A. 12-2901 et seq.

Likewise, although we find Washington County, rather than the city of Haddam, primarily responsible for the maintenance of a county primary road which passes through the city (K.S.A. 68-506), we believe that an interlocal agreement would be extremely beneficial in resolving this issue. Given the fact that the county road is utilized by citizens living in Haddam, it seems equitable that the expenses should be apportioned between the two governments. The city could appropriate its share of the necessary funds and turn them over to the county pursuant to K.S.A. 12-2907 and as the joint agreement may provide. We also call to your attention the provisions of K.S.A. 12-2904(f) (approval of the attorney general required) and K.S.A. 12-2905 (filing of agreement with register of deeds and secretary of state). In addition, funds provided by the county pursuant to such an agreement must be budgeted and expended in accordance with Kansas law, particularly the Budget Law, K.S.A. 79-2925 et seq.

In addition to K.S.A. 12-2901 et seq., two other statutes authorize interlocal cooperation. K.S.A. 68-169 supplements K.S.A. 12-2904, and provides in relevant part:

"Any county, city or political subdivision of this state shall have the authority to enter into written agreements with each other or with the secretary of transportation with respect to the planning, designing, financing, constructing, reconstruction, maintaining, acquiring of right-of-way or establishing

to controlled access facilities of any existing or proposed highway, road, street or connecting link, including bridges, traffic control devices and other such improvements located thereon.

Expenditures made pursuant to such agreements shall be considered proper expenditures of public funds, including state funds, notwithstanding the location of such improvement or facility outside the boundary or jurisdiction of such county, city or political subdivision."

K.S.A. 68-572 specifically addresses intergovernmental agreements for road construction and maintenance, and states:

"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, reconstruction or maintenance of any roads or streets."

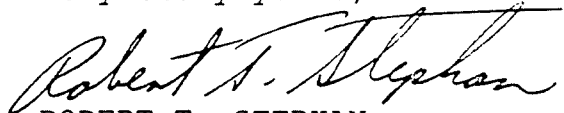
Thus, it appears the legislature has expressly authorized the forming of contracts between cities and counties. In Attorney General Opinion No. 80-213, we concluded that cities and counties are authorized to enter into agreements with each other for the construction, reconstruction or maintenance of any roads or streets without the letting of competitive bids. That opinion noted that the title of the act (see L. 1967, ch. 354) makes clear that the agreements referred to in the above quotation are agreements by and between cities, counties and townships. The title of the act is stated, in pertinent part, thus:

"An Act relating to intergovernmental cooperation, authorizing counties, townships and cities to contract with each other as to the improvement of roads and streets"

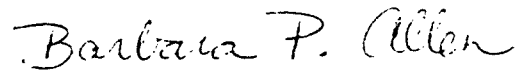
In conclusion, it is our opinion that the county is primarily responsible for the maintenance of main traveled highways which lie within a city and which connect county primary roads with the city, although a city is also empowered to aid in the maintenance of such roads. K.S.A. 68-506. Thus, in the event of a controversy over the maintenance of a county road which

passes through a third-class city, and to ensure the most efficient use of public funds, an interlocal agreement apportioning the costs between the county and the city may be formed.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Barbara P. Allen
Assistant Attorney General

RTS:JSS:BPA:crw