



Township Book

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Kansas Association of Counties

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Acknowledgements

This guide is based on a Kansas Laws and Legal Opinions prepared by Darrin Devinney, Butler County Attorney, and a Township Study dated September 7, 2007 by the Kansas Advisory Council on Intergovernmental Relations. Butler County was the primary source for laws relating to township officials. KOMA and KORA information was obtained from the Kansas Attorney General.

Introduction & Purpose

Townships in Kansas are governed by an elected township board consisting of a Trustee, Treasurer and Clerk. These elected officials work in relative isolation without the assistance of administrative or legal staff. The townships may not have an office and may instead meet at a kitchen table. The townships have no functioning statewide association to look out for their interests or to provide education and training. But they are still expected to know and follow all the laws, rules, and regulations.

Citizens recognize the functions of the state, counties, and cities, but few citizens understand the functions of townships. Until I became Local Road Engineer at the Kansas Association of Counties, I was unaware of how little guidance there is for township officials. This guide was prepared to help township officials understand their duties and responsibilities. Townships in the 35 Kansas counties that have a County-Township road system have rural road maintenance responsibilities, and considerably more responsibilities and liability than in the other counties. Since I am a road person this guide concentrates on road issues but recognizes that the townships have other responsibilities.

This guide can be a help to township officials, but it is no substitute for legal and professional advice when dealing with specific issues.¹

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¹ The information in this publication is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. Use of this publication does not create an attorney-client relationship between the Kansas Association of Counties and the user. The opinions expressed in this document are the opinions of the individual author and may not reflect the opinions of KAC.

Road Systems in Kansas

In Kansas there are three types of road systems for roads outside cities. Responsibility for maintaining township roads is based on the type of road system adopted by the county.

Non-county Unit Road System:

The Non-county Unit Road System is also called the County-Township system. In this system the County maintains the main roads, and the townships maintain the local roads. The county maintains all the bridges as well as those culverts with a waterway opening of 25 square feet or larger. Prior to 1917, the townships maintained all the roads, but since 1917 the Non-county Unit Road System is the road system unless the county has elected to use one of the other road systems. There are 35 counties in Kansas with this road system. Funding for the county roads is on a county-wide tax basis with all property in the county having the same mill levy for county roads and bridges. Townships are funded from a mill levy on property within the township, but townships do not collect property tax for property within a city.

County Unit Road System:

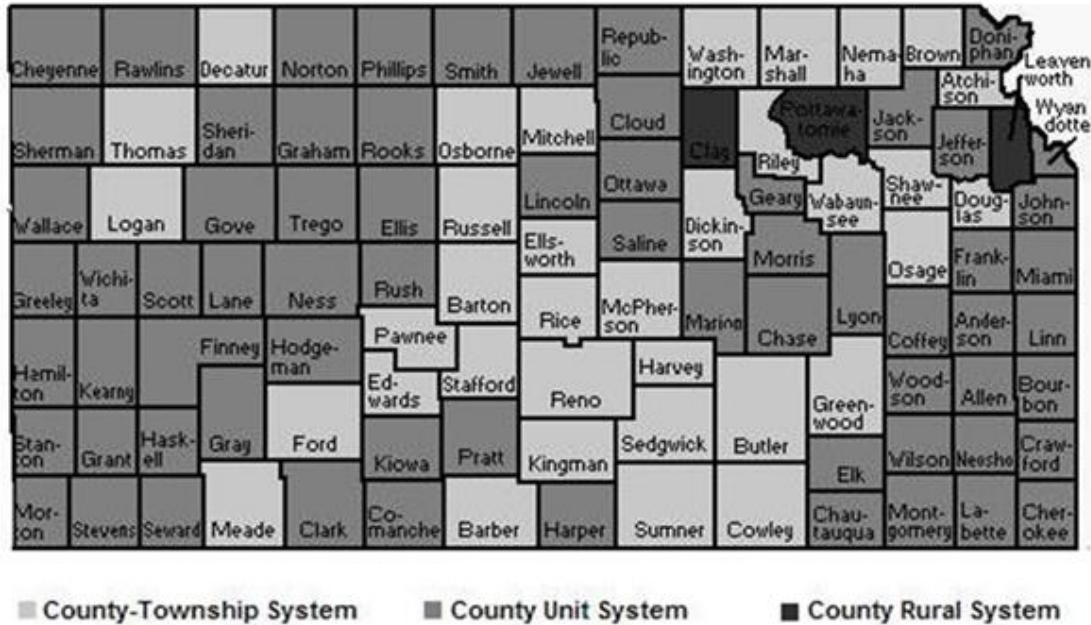
In the County Unit Road System the county is responsible for maintenance of all the public roads outside the cities. The townships have no road maintenance responsibilities. The County Unit Road System was authorized by state law in 1917, but it takes action by the county to take over the township roads. There are 67 counties in Kansas that have this road system. Funding for all the county roads is on a county-wide tax basis with all property in the county having the same mill levy for county roads and bridges. This results in a somewhat higher mill levy for city residents than the County-Township System as the city residents have to pay taxes for maintaining all the county roads, including the old township roads. This road system is authorized by KSA 68-515b.

General County Rural Highway System:

The General County Rural Highway System is similar to the County Unit Road System in that the county maintains all the public roads outside the cities, and the townships have no road maintenance responsibilities. In this system the county has to have two separate funds, one for the main county roads, and one fund for what were previously township roads. The General County Rural Highway System was authorized by state law in 1970. There are just three counties in Kansas with this road system. Funding for the county roads is on a county-wide tax basis with all property in the county having the same mill levy for county roads and bridges. Funding for former township roads are funded from a mill levy on property within the townships, but does not include property tax for property within a city. In this system city residents do not pay taxes for maintenance of the former township roads. The county has to keep track of expenses on their two-road systems, and must ensure that the correct amount is spent on county roads and township roads. This road system is authorized by KSA 68-591.

Road Maintenance Systems | By County

As of September 2012



Trends:

The map illustrates the type of road system in each county. The following table illustrates the trend in conversion of the County-Township System to another road system.

Year	County Unit	County Rural
1910s	2	
1920s	16	
1930s	7	
1940s	26	
1950s	5	
1960s	4	
1970s	7	1
1980s	0	1
1990s	0	
2000s	0	1

The last county that converted to a county unit road system was Coffey County in 1979. The Coffey County commission adopted a resolution to implement the county unit road system, and there was no protest petition. Osage County voters turned down a county unit petition in 2010. It appears that there is currently a reluctance to convert to a county unit system as this will increase the taxes for residents inside of cities.

Township Calendar

The following items are required by state law.

Monthly: First of every month the township road overseer makes an itemized report to the township board. K.S.A. 68-538

January 15: Township Clerk submits annual statement to the county engineer of all road work in the previous year. K.S.A. 68-539

January 31: Township Board submits annual report on expenditures to the County Clerk for review and approval by County Commission. K.S.A. 80-302

February: Township Trustee meets with the Board of County Commissioners and provides an auditing report and detail of township affairs. K.S.A. 80-304

March – Last Monday: The township board of highway commissioners shall hold regular meetings on the last Monday of March, June, September, and December. K.S.A. 68-524

March: The township trustee, clerk and treasurer of each municipal township shall constitute an auditing board. The auditing board shall meet in March, June, September, and December of each year and examine and audit all claims against the township. K.S.A. 80-302

June 10: Filing deadline for township board member candidates in even-numbered years.

June – Last Monday: The township board of highway commissioners shall hold regular meetings on the last Monday of March, June, September, and December. K.S.A. 68-524

June: The township trustee, clerk and treasurer of each municipal township shall constitute an auditing board. The auditing board shall meet in March, June, September, and December of each year to examine and audit all claims against the township. K.S.A. 80-302

July 1: County Clerk notifies all taxing subdivisions of assessed valuation of all properties for the next year's budget. K.S.A. 79-5a27

August 1: Last day for township board to meet and prepare budget. K.S.A. 79-2927

August 5: Last day for publishing notice of budget hearing. K.S.A. 79-2929

August 15: Last day for public hearing on budget. K.S.A. 79-2933

August 25: Last day to certify the budget. K.S.A. 79-1801

September: Within 30 days of primary election candidates must submit financial expenses. K.S.A. 25-904

September – Last Monday: The township board of highway commissioners shall hold regular meetings on the last Monday of March, June, September, and December. K.S.A. 68-524

September: The township trustee, clerk and treasurer of each municipal township shall constitute an auditing board. The auditing board shall meet in March, June, September, and December of each year to examine and audit all claims against the township. K.S.A. 80-302

October – Last Saturday: Township treasurer presents certified statement and books to township board at their annual meeting. K.S.A. 80-402 & 80-405. Treasurer files duplicate copy of report with the County Clerk. K.S.A. 80-403

October – Following quarterly meeting: Trustee prepares statement of all bills allowed. K.S.A. 80-406

November – Election Day: Township officers to post treasurer's report and trustees report at polling locations in the township. K.S.A. 80-407

December: Within 30 days of general election candidates must submit financial expenses. K.S.A. 25-904

December – Last Monday: The township board of highway commissioners shall hold regular meetings on the last Monday of March, June, September, and December. K.S.A. 68-524

December: The township trustee, clerk and treasurer of each municipal township shall constitute an auditing board. The auditing board shall meet in March, June, September, and December of each year to examine and audit all claims against the township. K.S.A. 80-302

Road Right-of-Way Issues

How Roads Opened

Rural roads were usually opened after local residents petitioned the county commission. The county commission appointed road viewers. The road viewers set a date and time to view the road, and notice was published in the paper and sent to adjacent land owners. At the designated time the road viewers and the county surveyor would view the area where the road was requested. The viewers made an opinion on whether the road would be of public utility and also determined the most practical route of the road. The county surveyor would stake the road location determined by the viewers. Adjacent land owners would submit claims for damages based on the location of the road, and the viewers would recommend the amount they thought was justified. The county surveyor made field notes of the road location and would later draw the location of the road in a road record book and perhaps place a copy in the road opening packet. The county commission would receive the report of the road viewers and order the road to be opened, or reject the petition. If the road was to be opened, the county would pay damages to the adjacent owners. The last action by the county commission in opening a road was to notify the township road overseer to open the road.

Road Easement and Uses

In Kansas the road right-of-way is an easement for a specific purpose, that of public road. The right-of-way is not county or township property, and there is not unlimited jurisdiction. The adjacent land owner actually owns the land and has certain rights. Counties and townships need to remember this limitation during their operations.

In legal terms the county holds the dominant estate and the adjacent land owner has the servient estate. In rural areas most deeds list something like “except the public road.” This exception is just calling out the road easement, and is not excepting the land under the road, so the land under the road easement always passes to the next land owner. This exception should not give the impression that the county owns the land. The land owner retains the mineral rights, and the county cannot drill a water well or an oil well on the right-of-way.

Adjacent Land Owner Uses

Since the county only has an easement on the road, officials must keep this in mind when dealing with adjacent land owners. The adjacent owners have the right to use the land in a manner that does not conflict with the road easement. An adjacent land owner can mow grass, bale hay, and cut and trim trees without permission from the county. He can also farm the right-of-way as long as the farming operation does not interfere with or damage the road and ditches. The land owner cannot damage any county or township property, nor do anything that obstructs the right-of-way or causes a safety issue.

Items of Commercial Value

A road easement does not give the county or township authority to allow private parties permission to take items that have commercial value from the right-of-way. The most

common items are firewood, ledge rock, hedge posts, wildflowers, and dirt. The county can give their permission to remove those items, but the private party must then contact the land owner to obtain final approval.

Many times when we clean a ditch we have excess dirt for disposal. Once dirt washes or blows onto the right-of-way that dirt is a waste product we need to get rid of as cheaply as possible. We can certainly use the dirt to build up a road or fill in a wash in a road ditch. Sometimes the dirt isn't suitable for road use and we dispose of it off site and dump the dirt on a neighbor's property. Many times a land owner will object to this as it appears that you are giving his dirt to someone else. There is no legal requirement that we go to extra expense to dispose of dirt on the adjacent land owner's property. If the land owner wants "his" dirt back, it is cheaper to roll the dirt back into the field or leave it piled at the back of the ditch, but we do not have to haul it to where he wants it piled.

Trees & Brush

Trees and brush are a constant maintenance issue in eastern Kansas. In run-off the road accidents over 30% of the fatalities are due to collision with a tree, so trees are a hazard to traffic and can be removed by the county. Since trees and brush need to be removed for safety there is no doubt the county has authority to do this kind of work at any time if it is necessary for safety or maintenance reasons. If there are trees on the right-of-way that have commercial value it seems the land owner should be given an opportunity to harvest the wood before the county removes the tree. Trees on the right of way line should not be removed or killed without permission from the land owner. These trees are partially off the right-of-way so are under joint jurisdiction of the county and the adjacent land owner, and it would be impossible to remove a tree without getting off of the public right-of-way. An exception for trees on the right-of-way line is provided by KSA 19-2612 for trees and hedges within 350 feet of an abrupt turn in the road or a railroad crossing. This statute allows the county commission to cut or remove trees or hedges to provide clear vision.

Moving Roads

If you have been in county or township work very long you have been asked to move a road to the correct location. The facts are usually the same; the requestor had his property surveyed and the surveyor found that the road was in the "wrong" location. The road always needs to be moved farther away from the person requesting the work.

The first impression is that a road should be in the right place, and putting the road in the right place is just the right thing to do. But then you start thinking about how this would be done. If you move the road over you make one owner happy, but what about the guy that you are going to be taking land from, and does he have a shotgun? This situation came up a long time ago and was settled by the Kansas Supreme Court in 1886, and the court said that not only do you not have to move the road, you cannot move the road. A township was doing road work and wanted to put the road in the correct location as shown on the county surveyor's field notes and plat. The court ruled the road location was established by the original survey and opening, and the county surveyor's field notes

and plat must yield to the actual location where the road was opened. The court did not allow the township to move the road.

Roads do not move much. Certainly paved roads can't move, but gravel and dirt roads could theoretically change locations based on maintenance practices. However, there are all kinds of restraints keeping roads from moving: culverts, bridges, fences, intersections, as well as the watchful eyes of adjacent land owners. Despite these safeguards, there will still be occasions when a surveyor— now 130 years after the road was surveyed and damages paid accordingly—will declare the road or the right-of-way fence is in the wrong place.

There are many reasons that a modern surveyor won't come to the same answer as the original surveyor. A monument may have been lost and reset in a slightly different location, modern equipment may provide a more accurate measurement, or there may have been some errors in the original survey and notes. But the point is there is a difference in the surveys, the road did not move. If there is a situation where the road has moved, there probably is an obligation to move the road to the proper location. An example of this might be where a farmer kept farming closer to the road, or perhaps a hedge had not been trimmed so the road moved away from the hedge row.

Opening roads that have not been travelled

In all areas of the state there are a few roads that have fallen into disuse, and are no longer travelled. Trees may have grown up in the right-of-way and blocked the road, culverts may have washed out, ruts may have enlarged to gullies, and so generally the road cannot be traveled with normal vehicles. Usually these were roads that were difficult to maintain anyway, and when a farmstead was abandoned, if the farmers had alternate access, the township just let the road return to nature. The road is still officially on the books as the road easement has not been vacated.

If a road hasn't been used in decades and a landowner requests that the county or township open the road, there is then a question about the county or township's responsibility to respond. Usually, everyone has access to their property, so opening the road is probably a convenience, not a necessity. One circumstance, however, where the road could become a necessity is if there was a landlocked tract that existed before the road became untraveled. If the landlocked tract was being farmed by an adjacent owner who used his property for access to the landlocked tract and the renter gave up farming the landlocked tract, a new renter may not have access. But in most situations opening the road is really a convenience and only benefits an adjacent owner. KSA 68-115 provides that on an unopened township road, the adjacent land owner that wants the road opened is required to improve the road to township standards.

Minimum-Maintenance Roads

Almost all counties and townships are struggling to maintain their roads properly. There are limited funds available, so we have to set priorities. Rightfully the higher priorities need to be the roads that have higher traffic volumes. But what results is the lower-traffic roads get less attention and they begin to deteriorate. Grass starts growing in the road,

ditches fill with silt, culverts may plug up or wash out, and in eastern Kansas the trees start crowding the road. What used to be a road starts looking more like a field road or a trail. These are not the type of roads that an unfamiliar or inattentive driver should travel. It would be nice to vacate the road, but in most cases the road cannot be vacated as it provides access to farm fields. We can't afford to keep the road in condition for travel by the general public in all weather conditions. This scenario has been going on for at least 30 years, maybe longer. With the high cost of road maintenance and the static or shrinking tax base, the trend is for more rapid deterioration of our less travelled roads.

The state legislature considered this issue in 1981 and allowed for the declaration of minimum-maintenance roads for roads that are used only occasionally or are used by only a few individuals. If the county commission declares the road a minimum-maintenance road and installs a specified warning sign then there is an exemption for the county and/or township under the tort claims act. So the minimum-maintenance road designation allows us to leave a road open, at a lower-grade condition, and not be as concerned about the liability issues.

The process of declaring a minimum-maintenance road is not complicated.

- 1) The county commission determines which roads should be minimum-maintenance roads. It then adopts a resolution describing the roads and transmits the resolution to the county planning commission.
- 2) Notice of a public hearing is published once in the official county newspaper.
- 3) After the public hearing the county commission decides which of the designated roads should be declared minimum maintenance.
- 4) Not later than 10 days after the declaration a warning sign is installed that says "Minimum-Maintenance Road Travel at Your Own Risk."

A person might wonder what roads should be declared minimum maintenance. To my knowledge there is no legal definition of a minimum-maintenance road except what is referred to in the enabling law: "used only occasionally or is used only by a few individuals." A minimum-maintenance road is not adequate for uses that require daily access such as a school bus route, mail route, or for a home or business. In most instances the purpose of the minimum-maintenance road is to provide seasonal agricultural access.

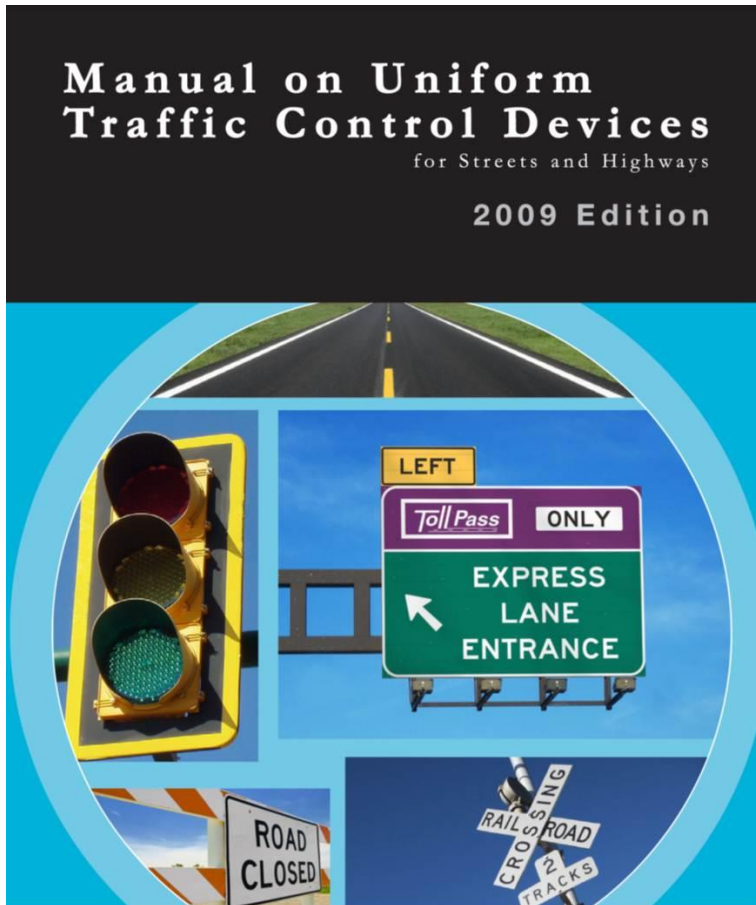
The question routinely arises concerning adequate maintenance of a minimum-maintenance road. The answer is not in the law, and has not been tested in court. I am sure that "minimum maintenance" does not mean a no-maintenance road. A warning sign is not a barricade and it is reasonable to assume the road is passable in dry weather, but may be impassable during periods of snow and wet weather. The road should be reasonably safe to travel during dry weather by an alert driver.

Signing Signage

MUTCD

KSA 8-2003 requires the Kansas Secretary of Transportation to adopt a signing manual. When adopted the signing manual applies to all public roads in Kansas including city

streets, county roads, and township roads. On December 16, 2011 the Secretary of Transportation adopted the *Manual on Uniform Traffic Control Devices 2009 Edition* (2009 MUTCD), prior to December 16 the 2003 MUTCD was the adopted signing manual. So at this time the 2009 MUTCD is the signing standard for public roads and all road agencies should immediately start complying with this standard.



The MUTCD can viewed or downloaded from MUTCD website at: <http://mutcd.fhwa.dot.gov/index.htm>. To obtain a paper copy the downloaded version may be printed and inserted in a binder. A paper version can be purchased from Amazon, or agencies listed on the MUTCD website.

County/Township Responsibilities

Generally all signing on a township road is the responsibility of the township except for signing at county bridges and culverts. Counties normally maintain the object markers and weight limit signs at county bridges and culverts. Since counties do not check signing on township roads the township should notify the county if one of their signs on a culvert or bridge is missing or damaged.

Regulatory Signing

Regulatory signs are generally the STOP, YIELD, and speed-limit signs. In most counties, the townships are not authorized to establish regulatory signing, and the county commission must pass a resolution authorizing the regulatory sign. KSA 8-2005

authorizes townships in Douglas, Johnson, Riley, Shawnee and Sedgwick counties to place regulatory signing with general supervision by the Board of County Commissioners. County policy will govern whether the townships are required to maintain regulatory signs.

Sign Assessment System

The MUTCD does require each agency to have a sign-assessment system so that their signs meet minimum reflectivity levels. The compliance date for a sign-assessment system is May 2014. There are a number of assessment systems that could apply to small governments like townships:

1. Annual night-time inspection by a trained observer.
2. Replacement of individual signs based on estimated sign life or retro-reflectivity measurements.
3. Blanket replacement of all signs in an area based on estimated sign life.

The sign assessment system needs to be written, and documentation that the system is being maintained needs to be preserved for a number of years. A signing inventory is not a requirement, but an inventory will allow better management and may reduce long term costs.

Signing Penalty

There is no penalty or fine for failure to comply with the MUTCD. However, as a public agency we have a duty to maintain signs in accordance with the MUTCD. If we fail to perform this duty, and someone gets hurt, this standard is enforced through tort liability. The injured person's attorney has to show that the lack of complying with the MUTCD was a contributing factor that caused the accident, and the township may have to pay damages.

Utilities

Public Utility Authorization

State law authorizes public utilities to use road right-of-way, without permission of the adjacent land owner. The specific laws are as follows:

- Electric cooperatives: KSA 17-4601 et seq
- Phone: KSA 17-1901 et seq
- Wind power: KSA 17-4654 et seq
- Sewage: KSA 16-623 – 4
- Other public utilities: Mall v. C.&W. Rural Elec. Coop. 213 P.2d 993

The statute wording is nearly uniform and allows the utilities to: construct, maintain and operate lines along, upon, under, and across publicly-owned lands and public thoroughfares, roads, highways, streets, alleys, bridges, and causeways in conformity with the laws of the state of Kansas. Court cases have further stated utilities cannot obstruct or hinder the usual travel, adversely affect public safety, or obstruct the legal use by other utilities.

Permitting

State law also provides that local agencies may establish rules and regulations governing the use of public right-of-way as long as the rules are competitively neutral and are not unreasonable or discriminatory. One of the laws that applies to utilities or any other person is KSA 68-545, which requires permission to dig in the road right-of-way.

Damages

The common law rule for damages is that when someone damages your property you are entitled to compensation. This would apply to utility companies that are working on the right-of-way, except when they are legally driving on the road. Most utility work is done by contract and most contracts have a clause that the contractor has to restore the work area. Contractors working for utility companies will have liability insurance and may be bonded. First contact for damage repair should be the contractor to inquire when they will repair the damage. It is best to stress that you are only interested in public safety and restoration of the right-of-way. Most contractors do not want you to contact their insurance company or their bonding company, but that is your right if they do not respond. If the contractor fails to respond, then contact the owner to see if the contractor has a restoration clause, performance bond, and insurance. If the contractor fails to restore the right-of-way, then it may be necessary to perform the work and send the contractor an invoice for damages.

Private Utilities

On occasion, private companies or individuals request permission to install a pipeline on right-of-way. Common examples include crude oil lines between an oil well and a tank battery, an irrigation pipe, and a pipe carrying animal waste from a feed lot to a lagoon. Counties are accustomed to granting permission for public utilities to install lines on right-of-ways. Requests from a private company may not seem much different from public utilities, but there are many significant differences.

The county and township only have a road easement. The state legislature and court cases have given certain public utilities authority to use the road easement. These statutes and court cases do not apply to private lines, and most agencies do not believe counties or townships have the power to authorize the installation of private lines in the right-of-way. If a private company needs to cross the road, they must obtain permission to install the line from the adjoining land owners, so there are no property-owner issues with the authority to grant the permit. Where pipelines cross the road they should be clearly marked, as few private companies are members of One-Call.

Reference Material

A good source of information on utility issues—including templates for permits and construction requirements—is the *Guide for Accommodating Utilities within Right-of-way for Counties & Small Cities in Kansas* available from Kansas LTAP.

The guide is available in word format or PDF:

<http://www.kutc.ku.edu/pdffiles/ROWguide2007.pdf>

Drainage

Note: This information on drainage is from an article by Norm Bowers in the May 2011 issue of the *County Comment*.

General

There is an old saying that “the only thing you need to know about drainage is that water runs downhill.” Water certainly runs downhill, but the rest of the saying is incorrect. For road work drainage is one of the more complicated issues facing road-maintenance workers. I

Drainage is certainly a bigger issue in eastern Kansas than western Kansas. The Kansas Geological Survey has published a map that shows the mean annual runoff. The map shows 0.1 inches of runoff in western Kansas and gradually increases to 10 inches of runoff in eastern Kansas. So eastern Kansas has 100 times the surface water runoff as western Kansas.

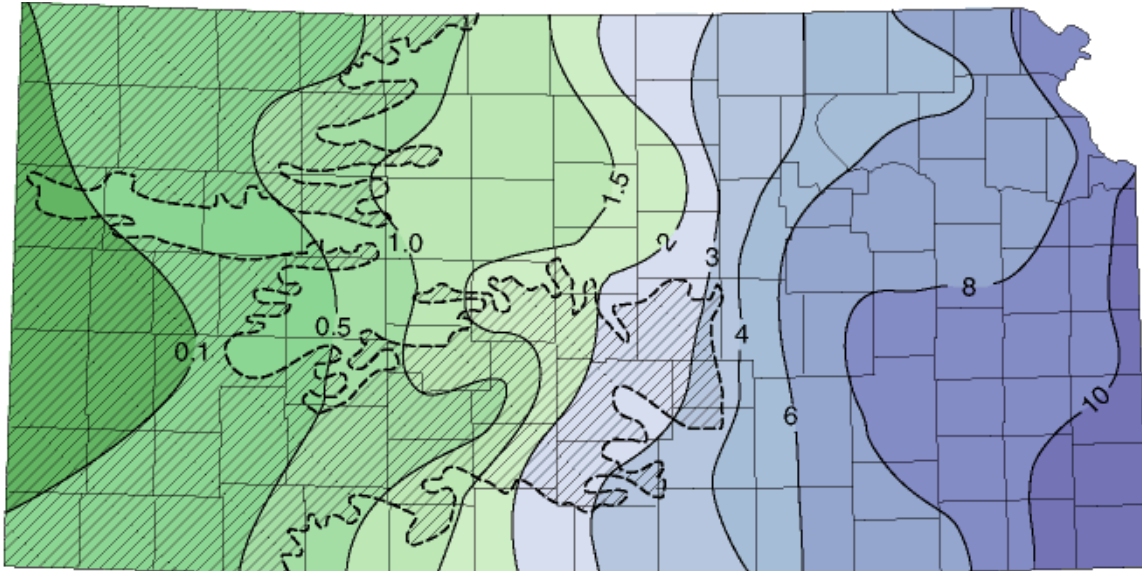


Figure 4. Mean annual runoff (in inches) in Kansas. The areas west of the dashed line shows the extent of the High Plains aquifer in Kansas (Adapted from Wetter, 1987).

In western Kansas, the road ditch is less for drainage and more for obtaining dirt to build up the road above the surrounding ground so the snow will blow off. In eastern Kansas the road ditch is definitely needed to provide drainage for the road.

Common Law

This may seem strange to those in western Kansas, but historically surface water has been seen as a common enemy of landowners. The common law relating to drainage was developed in merry ol' England and eastern states where surface water causes problems. So the common law that developed allowed landowners to protect their property from surface water. That is, the “landowner has the right to use and improve his own land for the purpose for which similar land is ordinarily used; and may build upon it, or raise or

lower its surface, even though the effect may be to ... shed surface water over land upon which it would not otherwise go.” *Liston v. Scott*, 108 Kan. 180, 194 P. 642 (1921).

Agricultural Areas

Obstructing Ditches

Kansas also prohibits blocking a natural-drainage course in KSA 24-206: “If any person shall maliciously or willfully fill up or obstruct any ditch, drain, or watercourse, he shall forfeit and pay to the county... the sum of ten dollars... and shall moreover be liable for all damages that may accrue to any person or persons by such an act or acts.”

Backwater from culvert

Preceding are the basic drainage laws in Kansas, but as you might imagine drainage has been the subject of many court cases and there are cases that deal specifically with road drainage. Backwater from culverts has been addressed by the courts a number of times and in 1919 in *Scott v Glenwood Tp*, the court stated:

It is true, as plaintiff contends, that an insufficient culvert which throws the water back upon the land of an abutting owner, substantially damaging him, constitutes a nuisance, which may be abated by judicial action (*Murphy v. Fairmount Township*, 89 Kan. 760, 133 Pac. 169). To be entitled to an injunction it was necessary for the plaintiff to establish that the culvert caused substantial injury to her property.

So it is fairly well established that backwater from a culvert is permissible if it does not result in substantial damage, but be careful when replacing culverts or bridges with smaller structures.

Controlling Floodwater

It seems that people who own land that floods usually ask the city or county to do something about it. Well the courts have considered this matter, and local government is not required to solve everyone’s flooding problem. The general rule in Kansas is set in *Baldwin v. City of Overland Park*, 205 Kan. 1, 468 P.2d 168 (1970):

Kansas law generally recognizes no action against governmental entities for failure to control surface waters or for any increased or accelerated flow caused by lawful improvement, especially where it is demonstrated that the public improvement caused no greater amount of damage to adjoining landowners than would have been caused without the improvement. A city has no duty to provide drainage to take care of surface waters, and ordinarily its failure to protect citizens from surface water is not actionable.

The *Baldwin* Court also referenced *Corpus Juris Secundum*, a legal encyclopedia, which expounded that, “In the control and disposition of surface waters, municipal corporations ordinarily have the same rights and are subject to the same liabilities as private persons. In the absence of statute or charter providing otherwise, they are under no obligation to

prevent the natural flow of surface waters or to protect private property from damage therefrom, and they are not liable for any damage caused thereby.” *Baldwin*, 205 Kan. at 7 (citing [63 C.J.S. Municipal Corporations s 883](#), 275).

Increase in flow

Cities can develop and pave to increase the flow of water downstream, if in accordance with the principle of common law found in *Williamson v. City of Hays*, 275 Kan. 300, 64 P.3d 364 (2003):

As a general rule, a municipal corporation is not liable for damage caused by the increased or accelerated flow of surface waters which have not been diverted from their natural course, or by the incidental change or interruption in, the discharge of, or the increased or accelerated flow of surface waters caused by the lawful improvement of its streets or the making of other public improvements.

If the law were otherwise it would certainly be difficult for cities to expand.

Drainage Summary

To summarize, in agricultural areas we should not change the course, current, or content of surface water as it leaves our property. However, in cities and areas of development, the common law is more lenient and allows some increase in velocity and volume of surface water.

Training

Need for Training

As a township official it is easy to become isolated and unaware of new technology, regulations, and requirements. Election as a township official does not make a person an expert in road maintenance or the legal requirements relating to operation of a township. Training and information is available at little or no cost.

Kansas LTAP

Kansas Local Technical Assistance Program (LTAP) is one of 58 centers across the United States that promotes the national LTAP mission of fostering a safe, efficient, and environmentally-sound transportation systems by improving skills and knowledge of local transportation. Kansas LTAP provides training, technical assistance, and technology transfer. It also provides services to local public works agencies and their employees throughout Kansas. In operation since 1983, Kansas LTAP offers a variety of services, including newsletters, video and publication lending library, training, and technical assistance. The Kansas LTAP receives funding from the Federal Highway Administration (FHWA) and the Kansas Department of Transportation (KDOT).

The Kansas LTAP website describes the services in more detail:

<http://www.kutc.ku.edu/cgiwrap/kutc/ltap/index.php>. The website includes a lending library, description of upcoming classes, past newsletters, and contact information for the LTAP staff. Each township should receive a quarterly newsletter, and if your township is

not receiving the newsletter, contact Lisa Harris at lharris@ku.edu. The township can also receive notices of upcoming training by contacting Kristen Kelly at kbkelly@ku.edu.

LTAP one-day classes that are particularly applicable to townships include the following:

- Gravel road maintenance
- Public Works 1 & 2\ New Supervisors (2 day)
- Basic Surveying
- Estimating quantities
- Culverts & Drainage

Kansas County Government Institute

Another training option is available through the Kansas Association of Counties. The Kansas County Government Institute is a program geared towards management and budget. The institute is described in detail on the KAC website at:

<http://www.kansascounties.org>. They have many programs to help individuals gain additional education including:

- [Certificate in Customer Service Excellence](#)
- [Certificate in Effective Supervisory Skills](#)
- [Kansas Roads Scholar](#)
- [Leadership Academy of County Commissioners](#)

For additional information or questions please contact the KAC Education Coordinator,

Reference Materials and Resource Documents

Publications

This section is a listing of recommended reference material and resource documents.

- Kansas Local Road Management Handbook
 - This handbook is a guide for road and bridge officials and is available in printed or electronically from the Local Technical Assistance Program at KU (LTAP)
- Utilities
 - A good source of information on utility issues including templates for permits and construction requirements is the *Guide for Accommodating Utilities within Right-of-way for Counties & Small Cities in Kansas* available from Kansas LTAP.
 - The guide is available in word format or PDF:
<http://www.kutc.ku.edu/pdf/files/ROWguide2007.pdf>
- MUTCD
 - 2009 MUTCD was adopted by the Kansas Secretary of Transportation in December 2011. Applies to all public roads, including township roads.
- County Road Laws of Kansas

- Chip Woods, Lyon County Engineer, authored a great paper on road laws of Kansas. The paper includes information on road openings, road records, history of state and territorial road laws, key court cases, and suggested resolution of common problems. An electronic version can be downloaded from the Document Center of the Kansas County Highway Association website listed below.

Websites

- Kansas County Highway Association
 - Kansas County Highway Association website has a document center with many publications that might be helpful.
<http://www.kansascountyhighway.org/>
- Kansas LTAP
 - Kansas LTAP website has many publications that might be helpful to townships. This is also the website where you can check and register for upcoming training: <http://www.kutc.ku.edu>
- MUTCD
 - MUTCD website maintained by the Federal Highway Administration has the latest revisions to the MUTCD as well as other helpful information on signing. The electronic version of the MUTCD can be downloaded from the website: <http://mutcd.fhwa.dot.gov>

TOWNSHIP OFFICERS (Key Statutes and AG Opinions)

80-201. Filling of vacancies; term, oath and bond.

All township officers appointed to fill vacancies shall hold their office for the remainder of the unexpired term, and until their successors are elected and qualified, and they shall take a like oath and give a like undertaking as is required to be given by officers elected.

History: G.S. 1868, ch. 110, § 15; R.S. 1923, 80-201; L. 1963, ch. 501, § 1; March 1.

80-202. Qualifications and oaths of certain township officials.

Every person elected to the office of trustee, clerk or treasurer of any township, or road overseer of any road district, shall be an elector of said township or road district at the time of his or her election, and shall within twenty (20) days after he shall be notified of his or her election take and subscribe the oath of office prescribed by law, and shall forthwith cause such oath to be filed in the office of the county clerk of his or her county; and in case any of such officers shall become nonresidents of their respective townships or road districts, their offices shall at once become vacant.

History: G.S. 1868, ch. 110, § 16; L. 1883, ch. 146, § 1; R.S. 1923, 80-202; L. 1973, ch. 134, § 55; L. 1974, ch. 446, § 26; July 1.

ATTORNEY GENERAL'S OPINIONS

1. Township treasurer; vacancy; disability. 82-11.
2. Change from city of third class to city of second class located in township; effect on township's authority. 82-237.
3. Qualifications of township officers; residency. 86-82.

CASE ANNOTATIONS

1. Cited; commissioner's report in ouster proceedings. State, ex rel., v. Burr, 151 K. 383, 384, 99 P.2d 742.

80-203. Township treasurer's bond.

Before entering upon the duties of office, the township treasurer shall execute a bond to the state of Kansas in an amount determined by the board of county commissioners. The amount and sufficiency of the bond shall be approved by the board of county commissioners, conditioned upon the faithful discharge of the treasurer's duties. The bond shall be filed by the treasurer in the office of the county clerk.

History: G.S. 1868, ch. 110, § 17; R.S. 1923, 80-203; L. 1969, ch. 468, § 1; L. 1984, ch. 370, § 1; July 1.

CASE ANNOTATIONS

1. Bond of treasurer; presumption as to execution and delivery. Rose v. Douglas Township, 52 K. 451, 453, 34 P. 1046

80-207. Township officers; reimbursement for expenses; compensation.

(a) The township officers of any township shall be reimbursed for any expenses incurred while actually and necessarily attending to township business.

(b) Members of the township board shall receive compensation for their services while actually and necessarily conducting township business.

(c) The township board, by adoption of a resolution, may fix the amount of compensation to be received by the members of the board. Such resolution shall be published at least once each week for two consecutive weeks in a newspaper of general circulation within the township. If the total amount of compensation to be received annually by each member of the board is \$100 or less, such resolution shall not be required to be published and shall be effective upon adoption of the resolution. A resolution providing for an increase in compensation shall not be effective until 30 days following the date of the last publication of the resolution.

History: L. 1982, ch. 429, § 4; L. 1996, ch. 184, § 5; L. 1997, ch. 17, § 1; July 1.

ATTORNEY GENERAL'S OPINIONS

1. Compensation of members of township boards. 04-18.

80-208. Compensation, salary or benefits, increases; limitations.

A township officer who also is an employee of the township shall abstain from voting for or participating in any motion of the township board to increase the compensation, salary or benefits to be paid to such person as an employee of the township.

History: L. 2002, ch. 15, § 1; July 1.

**CHAPTER 80, ARTICLE 3
TOWNSHIP TRUSTEE**

80-301. Powers and duties generally.

The township trustee shall have the power to:

- (a) Divide the township into road districts, and make such alterations as may be necessary;
- (b) ensure all moneys belonging to the township are properly spent for road or other purposes;
- (c) provide for the care and management of all property, real and personal, belonging to the township, and to superintend the various interests thereof;
- (d) cause a record to be made accurately defining the boundaries and number of each road district, as well as the alterations made in such district or districts in the township;
- (e) administer all oaths in the necessary discharge of the duties of the office;
- (f) superintend all the financial concerns of the township, and at the July session of the board of county commissioners, annually, with the advice and concurrence of the board of county commissioners shall levy a tax on the property in the township for township road and other purposes, and report the same to the county clerk, who shall enter the same on the proper tax roll in a separate column or columns, and the treasurer shall collect the same as other taxes are collected. If the trustee and board of county commissioners fail to agree on any such levy, the board of county commissioners shall levy such township road and other taxes; and
- (g) discharge such other duties as may be imposed by law.

History: G.S. 1868, ch. 110, § 22; L. 1885, ch. 194, § 1; R.S. 1923, 80-301; L. 1968, ch. 406, § 140; L. 1994, ch. 232, § 2; July 1.

ATTORNEY GENERAL'S OPINIONS

1. Township board; auditing board. 81-141.
2. Township trustee; powers and duties generally; roads and bridges. 86-47.
3. Township Board of Highway Commissioners; Compensation. 04-18.

CASE ANNOTATIONS

1. Officers may contract for bridge costing more than \$200; presumptions. Valley Township v. Bridge Mfg. Co., 4 K.A. 622, 45 P. 660.
2. Township board may build bridges on township line. Elmendaro Township v. Bridge Co., 6 K.A. 640, 49 P. 784.
3. Township board has power to make contract to build bridge. Uhl v. Township of Douglas, 27 K. 80.
4. Power to levy road tax; statute cited. K. C. Ft. S. & G. Rld. Co. v. Tontz, Treas., 29 K. 460, 462; M. & M. Rly. Co. v. Champlin, Treas., 37 K. 682, 683, 16 P. 222.
5. Township engaged in improving highway acts as agency of state; township not liable for personal injuries as to employee. Fisher v. Township, 87 K. 674, 125 P. 94.
6. Effect of stipulation entered into in proceedings against township considered. Fisher v. Odell Township, 87 K. 687, 125 P. 61.

7. Duty to divide county into road districts considered. Shane v. City of Hutchinson, 88 K. 188, 127 P. 606.
8. Duty with respect to drainage of roads considered. Marts v. Freeman, 91 K. 106, 111, 136 P. 943.
9. Township authorized to levy taxes to pay judgment for damages. Super v. Modell Township, 92 K. 979, 146 P. 993; 94 K. 402, 146 P. 993.

80-302. Auditing board; quarterly meetings; annual report; compensation of trustee, clerk and treasurer.

The township trustee, clerk and treasurer of each municipal township shall constitute an auditing board. The auditing board shall meet in March, June, September and December of each year and examine and audit all claims against the township, and shall file their annual report with the county clerk for the approval of the board of county commissioners on or before January 31 of the succeeding year. No claim against any township shall be paid until allowed by the auditing board. All claims allowed by the auditing board shall be recorded by the clerk electronically or in a book to be kept for that purpose.

The township trustee, clerk and treasurer shall each receive for the officer's services in attending to the township business, an amount determined by the township board as provided by K.S.A. 80-207, and amendments thereto.

History: L. 1885, ch. 168, § 9; L. 1887, ch. 234, § 1; L. 1913, ch. 333, § 1; R.S. 1923, 80-302; L. 1953, ch. 462, § 1; L. 1965, ch. 546, § 1; L. 1968, ch. 375, § 18; L. 1977, ch. 348, § 1; L. 1982, ch. 429, § 2; L. 1984, ch. 371, § 1; L. 1996, ch. 184, § 6; L. 2007, ch. 39, § 2; July 1.

ATTORNEY GENERAL'S OPINIONS

1. Township clerk; salary. 81-288.
2. Compensation of members of township boards. 95-113.

CASE ANNOTATIONS

1. Accounts to be itemized; formal presentation not necessary. Rock Creek Township v. Codding, 42 K. 649, 650, 652, 22 P. 741.
2. Claim for damages; filing of verified claim not necessary. Leisenring v. Pleasant Hill Township, 108 K. 29, 193 P. 893.

80-304. Annual report of trustee to county commissioners; liability of township auditing board; copies of report available for inspection.

(a) The township trustee, at the regular meeting of the board of county commissioners next succeeding the annual settlement of the township treasurer and road overseers, shall make a complete report of the affairs of the township for the preceding year, stating in detail the items of account audited and allowed, the nature of each account, and the name

of each person to whom such an account was allowed. Such report shall specify the amount of compensation and amount of reimbursement of expenses paid to members of the township board pursuant to K.S.A. 80-207, and amendments thereto. Such report shall be verified by affidavit and shall be examined by the board of county commissioners. If found correct and in conformity to law, the board shall approve the report and accounts and the same shall be filed in the office of the county clerk of such county. Copies of the report shall be made available upon request. If such report and accounts are found not correct, or not in conformity to law, the board shall cite such township auditing board to appear before it and correct any errors appearing therein. Such township auditing board and their bondsmen shall be liable to their township for the amount of any and all accounts or demands by them allowed or paid in excess of that authorized by law for any purpose. It shall be the duty of the county attorney of such county to prosecute any and all suits in the name of such township for the recovery of the same, in any court of competent jurisdiction.

(b) Payments made prior to August 2, 1996, to township officers for duties and services performed pursuant to K.S.A. 68-525, 68-530, 68-531, 68-542, 80-207, 80-302, 80-304, 80-410, 80-1204, 80-1407, 80-1501, 80-1544 and 80-2002, and amendments thereto, or while actually and necessarily conducting township business are hereby validated.

History: L. 1885, ch. 168, § 11; R.S. 1923, 80-304; L. 1984, ch. 371, § 2; L. 1996, ch. 184, § 7; L. 1997, ch. 153, § 1; July 1.

ATTORNEY GENERAL'S OPINIONS

1. Duty of county attorney to township concerning laying out and opening township roads. 81-162.

CASE ANNOTATIONS

1. Duty of township trustee; section quoted. Fisher v. Odell Township, 87 K. 687, 690, 125 P. 61.

80-305. Property of township; custody and disposition; receipt.

In addition to the duties now prescribed by law, the township trustee shall have the custody and disposition of the property of his or her township, and shall on going out of office take from his or her successor in office a receipt for such property as he or she shall transfer to him or her, and shall file such receipt with the county clerk of his or her county; and such receipt when so filed shall be prima facie evidence of the facts therein stated.

History: L. 1871, ch. 153, § 1; March 16; R.S. 1923, 80-305.

CASE ANNOTATIONS

1. Construction of drain in public highway; section cited. Marts v. Freeman, 91 K. 106, 111, 136 P. 943.

80-306. Prosecutions for violations of road laws.

The township trustee shall prosecute in the name of his or her township all violations of the different road laws, or any provisions thereof; and in such prosecution it shall be the

duty of the county attorney to act on behalf of the township.

History: L. 1871, ch. 153, § 2; March 16; R.S. 1923, 80-306.

ATTORNEY GENERAL'S OPINIONS

1. Duty of county attorney to township concerning laying out and opening township roads. 81-162.

CASE ANNOTATIONS

1. Section indicates by its verbiage a reference to criminal cases. The State v. Nye, 85 K. 559, 562, 117 P. 1014.

80-307. Removal of obstructions from highways.

The township trustee may remove obstructions from the highways in cases where the road overseers shall refuse or fail to do so; and the trustee shall in such cases have all the power of road overseers in calling out the inhabitants to perform the work necessary to remove such obstructions.

History: L. 1871, ch. 153, § 3; March 16; R.S. 1923, 80-307.

CASE ANNOTATIONS

1. Injunction preventing interference by road overseer; held not proper remedy. Montana Township v. Ruark, 39 K. 109, 18 P. 61.
2. Road overseers are primarily charged with repair to public highways. Hari v. Ohio Township, 62 K. 315, 317, 62 P. 1010; Shanks v. Pearson, 66 K. 168, 169, 71 P. 252.

CHAPTER 80, ARTICLE 4 TOWNSHIP TREASURER

80-401. Duties of treasurer.

The township treasurer shall receive and take charge of all moneys belonging to the township, or which are by law required to be paid to him or her, and shall pay out and account for the same upon orders drawn upon him or her by the township trustee, and shall discharge such other duties as may be required of him or her by law.

History: G.S. 1868, ch. 110, § 26; March 11; R.S. 1923, 80-401.

ATTORNEY GENERAL'S OPINIONS

1. Township board; auditing board. 81-141.
2. Township treasurer; duties. 82-104.
3. Township trustee; powers and duties generally; roads and bridges. 86-47.

CASE ANNOTATIONS

1. Bridge on township line; section cited. Elemendaro Township v. Bridge Co., 6 K.A. 640, 642, 49 P. 784.
2. Treasurer has charge of township money. Clark v. Railway Co., 8 K.A. 733, 736, 737, 54 P. 930.
3. Township warrant is prima facie an acknowledgment of a debt. Walnut Township v. Jordan, 38 K. 562, 16 P. 812.

80-402. Same; accounts; exhibit at annual meeting.

The township treasurer shall keep a true account of all moneys by him or her received by virtue of his or her office, and the manner in which the same have been disbursed, keeping a separate account with each fund, electronically or in a book to be provided at the expense of the township for that purpose, and shall exhibit such account, together with his or her vouchers, to the township auditing board at their annual meeting on the last Saturday of October in each year for adjustment and settlement.

History: G.S. 1868, ch. 110, § 27; L. 1885, ch. 168, § 12; L. 1886, ch. 140, § 3; L. 2007, ch. 39, § 3; July 1.

ATTORNEY GENERAL'S OPINIONS

1. Township treasurer; duties. 82-104.

CASE ANNOTATIONS

1. Treasurer and sureties are liable for moneys deposited in suspended bank. Rose v. Douglas Township, 52 K. 451, 452, 34 P. 1046.

80-403. Same; verification; duplicate to county clerk.

The account as provided for in the last preceding section shall be made out in duplicate, and shall be verified by affidavit that the same is in all respects true and correct, and that it contains the full and true amount of all moneys received by him or her during the full period of time for which he or she should make such statement; and one of such verified duplicates shall be filed forthwith by the treasurer in the office of the county clerk.

History: G.S. 1868, ch. 110, § 28; March 11; R.S. 1923, 80-403.

ATTORNEY GENERAL'S OPINIONS

1. Township treasurer; duties. 82-104.

CASE ANNOTATIONS

1. Township warrant is prima facie an acknowledgment of a debt. Walnut Township v. Jordan, 38 K. 562, 16 P. 812.

80-404. Deposit of moneys; investment of idle funds.

In all townships the township treasurer shall deposit all public money coming into his or her hands in an official capacity in a bank which is a member of the federal deposit insurance corporation or a savings and loan association which is a member of the federal savings and loan insurance corporation within the county, the same to be designated by the township board. Such deposits shall be made in the name of such treasurer as such officer. Township moneys not immediately required for the purposes for which such moneys were collected or received may be invested in the manner provided by K.S.A. 12-1675.

History: L. 1911, ch. 333, § 1; R.S. 1923, 80-404; L. 1933, ch. 159, § 3; L. 1937, ch. 82, § 3; L. 1973, ch. 407, § 1; July 1.

ATTORNEY GENERAL'S OPINIONS

1. Township treasurer; duties. 82-104.
2. Establishment of township funds--transfer of money between funds. 84-22.

80-405. Receipts and disbursements; quarterly statement; examination and approval.

Every township treasurer shall keep, electronically or in a book provided for that purpose, a true account of all moneys received and disbursed by him or her by virtue of his or her office, specifying particularly the sources from which money has been received by him or her; and the person or persons to whom and the objects for which the same has been paid out by him or her; and he or she shall present to the township board, at their quarterly meeting in October, a full and correct itemized statement, duly signed and certified by him or her, of all moneys received and of all moneys paid out by him or her during the year, and he or she shall exhibit the vouchers therefor, which certified statement shall be on a blank provided for that purpose. Said report of said treasurer shall be carefully examined by the board, and when found correct shall be approved by them, and placed in

charge of the township trustee.

History: L. 1898, ch. 39, § 1; L. 2007, ch. 39, § 4, July 1.

ATTORNEY GENERAL'S OPINIONS

1. Township treasurer; duties. 82-104.

80-406. Trustees to make statement of bills allowed; preservation.

The township trustee shall make a verified statement of all bills allowed by the township board for each year, ending with and including the regular quarterly meeting for October, stating particularly the person or persons to whom and the objects for which such bills were drawn; and he or she shall file and preserve such verified statement in his or her office.

History: L. 1898, ch. 39, § 2; March 1, 1899; R.S. 1923, 80-406.

80-407. Posting statements of treasurer.

At each annual election for electing township officers the township trustees shall post up in a conspicuous place at each voting place in his or her township a certified copy of the township treasurer's statement provided for in K.S.A. 80-405, and also a certified copy of the trustee's statement required by K.S.A. 80-406. These statements shall be put up at the opening of the polls, and in the room in which election is held, and shall remain in place until the polls are closed, so that all voters may examine them.

History: L. 1898, ch. 39, § 3; March 1, 1899; R.S. 1923, 80-407.

80-408. Penalty for failure of treasurer or trustee to make statement or to perform duty.

Any township treasurer or township trustee who shall willfully fail or refuse to make the statement or perform any duty required by this act shall be deemed guilty of a misdemeanor, and on conviction shall be punished by fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days.

History: L. 1898, ch. 39, § 4; March 1, 1899; R.S. 1923, 80-408.

80-409. Penalty for taking down or destroying statement.

If any township officer or other person shall willfully take down, deface or destroy any notice or statement or copy thereof required by K.S.A. 80-407 to be posted at any polling place, or shall by any means put or place such statement or copy out of plain view of the electors before the polls of the election are closed, he or she shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not to exceed one hundred dollars, or imprisonment in the county jail for not to exceed ninety days.

History: L. 1898, ch. 39, § 5; March 1, 1899; R.S. 1923, 80-409.

80-410. Financial statement filed with county clerk; copies available for inspection; publication, exception.

(a) The treasurer of each township shall file with the county clerk a duly verified full and detailed statement of the receipts, expenditures and liabilities of the township for the preceding calendar year, on or before January 31 of the succeeding year.

(b) The treasurer of each township having an annual budget exceeding \$25,000 shall publish, or cause to be published, in a newspaper of general circulation in the township immediately following the annual settlement in December of each year, a summary which shows totals for categories of the receipts, expenditures and liabilities of such township for the year ending at the time of such annual settlement. Such publication shall include a notice that a detailed statement of such receipts, expenditures and liabilities is available for public inspection at the county clerk's office. Copies of the statement shall be made available upon request.

(c) The treasurer of the township shall file with the county clerk a full and detailed statement of the amount of money paid to each member of the township board pursuant to K.S.A. 80-207, and amendments thereto, during the preceding calendar year, on or before January 31 of the succeeding year.

History: L. 1913, ch. 332, § 1; R.S. 1923, 80-410; L. 1984, ch. 371, § 3; L. 1996, ch. 184, § 8; L. 1997, ch. 74, § 1; L. 1998, ch. 135, § 2; July 1.

ATTORNEY GENERAL'S OPINIONS

1. Township treasurer; duties. 82-104 (*see below*).
2. Township treasurer; publication of annual financial statement; contents thereof. 83-140.

80-411. Same; penalty for violation.

Any township treasurer violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon the conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than ninety days, or by both such fine and imprisonment, for each offense.

History: L. 1913, ch. 332, § 2; April 30; R.S. 1923, 80-411.

AG Opinion No. 82-104 Township Treasurer Duties

May 24, 1982

Re: Townships and Township Officers--Township Treasurer--Duties

Synopsis: The duties of a township treasurer are set forth in Article 4 of Chapter 80, Kansas Statutes Annotated, and include the custody of all moneys of the township, the keeping of account books and voucher files and the publishing of notices concerning the financial position of the township. Furthermore, if the payment of money by the township is made by a warrant issued pursuant to K.S.A. 10-801 et seq., the treasurer must sign the warrant before it may be presented to the payee. Interference by other township officials with such duties can, if necessary, be the subject of a quo warranto action initiated by the county attorney. Cited herein: K.S.A. 10-803, 10-804, 60-1203, 80-401, 80-402, 80-403, 80-404, 80-405, 80-410.

Dorothy Shearer
County Clerk
Norton County Courthouse
P. O. Box 70
Norton, Kansas 67654

Dear Ms. Shearer:

As County Clerk for Norton County, Kansas, you request our opinion on behalf of the treasurer of Solomon Township as to the scope of that official's duties. You inform us that at present the township clerk writes and signs all checks drawn on the township, while the township trustee makes deposits and countersigns the checks. The treasurer does not receive any record of deposits which are made or checks which are issued, and so is unable to keep account books in preparation for the annual report due in October. The duties of a township treasurer are numerous, being set forth for the most part at K.S.A. 80-401 et seq. They include the following:

K.S.A. 80-401.

'The township treasurer shall receive and take charge of all moneys belonging to the township, or which are by law required to be paid to him or her, and shall pay out and account for the same upon orders drawn upon him or her by the township trustee, and shall discharge such other duties as may be required of him or her by law.' (Emphasis added.)

K.S.A. 80-402.

'The township treasurer shall keep a true account of all moneys by him or her received by virtue of his or her office, and the manner in which the same have been disbursed, keeping a separate account with each fund, in a book to be provided at the expense of the township for that purpose, and shall exhibit such account, together with his or her vouchers, to the township auditing board at their annual meeting on the last Saturday of October in each year for adjustment and settlement.' (Emphasis added.)

K.S.A. 80-403.

'The account as provided for in the last preceding section shall be made out in duplicate, and shall be verified by affidavit that the same is in all respects true and correct, and that

it contains the full and true amount of all moneys received by him or her during the full period of time for which he or she should make such statement; and one of such verified duplicates shall be filed forthwith by the treasurer in the office of the county clerk.'

(Emphasis added.)

K.S.A. 80-404.

'In all townships the township treasurer shall deposit all public money coming into his or her hands in an official capacity in a bank which is a member of the Federal Deposit Insurance Corporation or a savings and loan association which is a member of the Federal Savings and Loan Insurance Corporation within the county, the same to be designated by the township board. Such deposits shall be made in the name of such treasurer as such officer. Township moneys not immediately required for the purposes for which such moneys were collected or received may be invested in the manner provided by K.S.A. 1977 Supp. 12-1675.' (Emphasis added.)

K.S.A. 80-405.

'Every township treasurer shall keep, in a book provided for that purpose, a true account of all moneys received and disbursed by him or her by virtue of his or her office, specifying particularly the sources from which money has been received by him or her; and the person or persons to whom and the objects for which the same has been paid out by him or her; and he or she shall present to the township board, at their quarterly meeting in October, a full and correct itemized statement, duly signed and certified by him or her, of all moneys received and of all moneys paid out by him or her during the year, and he or she shall exhibit the vouchers therefor, which certified statement shall be on a blank provided for that purpose. Said report of said treasurer shall be carefully examined by the board, and when found correct shall be approved by them, and placed in charge of the township trustee.' (Emphasis added.)

K.S.A. 80-410.

'The treasurer of each and every township shall publish, or cause to be published, in some newspaper published in the township of which he or she is treasurer, or in some newspaper published in the county in which such township is located and having a general circulation in such township, immediately following the annual settlement in December of each year, a full and detailed statement, duly verified, of the receipts, expenditures and liabilities of such township for the year ending at the time of such annual settlement.' (Emphasis added.)

In addition, duties of the treasurer concerning warrants or warrant checks drawn on the township are set out at K.S.A. 10-801 et seq. While the trustee initially signs such instruments (K.S.A. 10-803), which are then recorded by the clerk (K.S.A. 10-804), the treasurer must thereupon 'enter in a book kept for that purpose, the number, date and amount of such warrant, or warrant check, on what fund drawn, and the name of the payee.' (K.S.A. 10-805). Further, the treasurer must sign the instrument before it may be delivered to the payee. V Op. Att'y Gen. 631 (Letter of September 15, 1966 to Charles W. Thompson).

While numerous duties of the three elected township officials have been found to be joint ones, exercised through the township board meeting as a body (Attorney General Opinion No. 81-141), those duties set out above are clearly placed solely upon the township treasurer. Given the facts that you present, it may currently be difficult for the treasurer to exercise such duties. Should the impasse continue, a remedy at law exists in the form of a

proceeding in quo warranto, K.S.A. 60-1201 et seq. This action may be used to oust the other township officials from an improper exercise of powers given by statute to the treasurer. See, e.g., State ex rel., Stephan v. Carlin, 229 Kan. 665 (1981). By statute, the county attorney is empowered to bring such an action (K.S.A. 60-1203). However, this remedy is an extraordinary one, and it may well be that a meeting between the township officials and the county attorney could resolve the situation before such an action was brought.

In conclusion, the duties of a township treasurer are set forth in Article 4 of Chapter 80, Kansas Statutes Annotated, and include the custody of all moneys of the township, the keeping of account books and voucher files and the publishing of notices concerning the financial position of the township. Furthermore, if the payment of money of the township is made by a warrant issued pursuant to K.S.A. 10-801 et seq., the treasurer must sign the warrant before it may be presented to the payee. Interference by other township officials with such duties can, if necessary, be the subject of a quo warranto action initiated by the county attorney.

Very truly yours

Robert T. Stephan
Attorney General of Kansas

Jeffrey S. Southard
Assistant Attorney General

**CHAPTER 80, ARTICLE 5
TOWNSHIP CLERK**

80-501. Duties of clerk.

The township clerk shall have the custody of the records, books and papers of the township, when no other provision is made by law; and he or she shall file in his or her office all such papers as are by law required to be filed, and promptly record such as are by law required to be recorded therein; and he or she shall discharge such other duties as may be required by law.

History: G.S. 1868, ch. 110, § 29; March 11; R.S. 1923, 80-501.

ATTORNEY GENERAL'S OPINIONS

1. Township board; auditing board. 81-141.
2. Township clerk; duties. 81-288.
3. Township trustee; powers and duties generally; roads and bridges. 86-47.

80-502. Same; recordation and posting of report of trustee.

He or she shall immediately after receiving the report of the township trustee record the same at length in the township record, and publish the same by posting up a certified copy thereof at the usual place of holding elections in the township.

History: G.S. 1868, ch. 110, § 30; March 11; R.S. 1923, 80-502.

ATTORNEY GENERAL'S OPINIONS

1. Township clerk; duties. 81-288.

80-503. Records open for inspection.

The records and other books of the township clerk and treasurer shall always be open for public inspection.

History: G.S. 1868, ch. 110, § 31; March 11; R.S. 1923, 80-503.

ATTORNEY GENERAL'S OPINIONS

1. Township clerk; duties. 81-288.

80-505. Destruction of certain records; definitions.

As used in this act: "Township" means any township in the state of Kansas; and "board" means the township clerk, township treasurer and township trustee acting as a board.

History: L. 1963, ch. 502, § 1; June 30.

80-506. Same; resolution; records subject to destruction.

The board of any township may, by resolution adopted by a majority vote of its members, authorize the township officer in charge thereof to destroy any of the following records, documents or papers which have been on file for a period of ten (10) years or more:
Bookkeeping records, claim vouchers, purchase orders, paid warrants and paid warrant-checks, bank statements, budgets, trustee's and treasurer's annual reports.

History: L. 1963, ch. 502, § 2; June 30.

KSA CHAPTER 80.--TOWNSHIPS AND TOWNSHIP OFFICERS
ARTICLE 1.--GENERAL PROVISIONS

80-101. Corporate status; powers.

Each organized township in this state shall be a body politic and corporate, and in its proper name sue and be sued, and may appoint all necessary agents and attorneys in that behalf, purchase and hold real and personal property for the use of the township, sell, convey and dispose of real and personal property owned by the township, and may make all contracts that may be necessary and convenient for the exercise of its corporate powers.

History: G.S. 1868, ch. 110, § 1; R.S. 1923, 80-101; L. 2008, ch. 19, § 1; July 1.

80-102. Division of funds when township divided.

Whenever any township which has no indebtedness, but which has money, either in its treasury or in course of collection, not required for the payment of current expenses, shall be divided, or any part of it attached to another township, there shall be a division of such money between the old township and the new one, or the township to which any portion of the old township shall be attached, in proportion to the taxable property remaining, and that detached.

History: L. 1873, ch. 154, § 1; March 20; R.S. 1923, 80-102.

80-104. Buildings and sites; election; exceptions; issuance of bonds.

(a) In addition to all other powers, the township board of each township shall have power to acquire land for the township, and to build thereon permanent buildings, or to purchase school building or grounds or both the building and grounds the same to be used for public purposes, such as meetings relating to township business, political gatherings, township fairs, entertainments, whether for free use or for hire and profit, at which an admission price may be charged, and such other meetings as may be authorized by the township board. The board may join with any corporation, association, society or lodge in the construction or purchase of such building, upon such terms and conditions as may be agreed upon by the board and corporation, association, society or lodge. If such building is so constructed or purchased it shall be for the joint use of the township and the corporation, association, society or lodge joining in the construction or purchase thereof upon such terms and conditions as are mutually agreed upon. Except as provided by subsection (b), the board shall not acquire any land or erect buildings thereon or purchase such schoolhouse or appropriate any of the moneys of the township or levy any tax therefor without first submitting the question to a vote of the electors of the township. Such election shall be governed by and the returns thereof made in accordance with the laws governing the election of township officers. Funds authorized by such election may be used in the joint construction or purchase of a building as herein provided.

(b) The township board may acquire, either by purchase or by lease, not to exceed 10 acres of land for the township. The cost of such land may be paid out of the general fund

of the township or from the general road fund of the township, or from either or both of the funds.

The township board may accept land in the form of a gift, donation or devise without first submitting the question to a vote of the electors of the county.

(c) Whenever any township is authorized by virtue of an election to construct or purchase township buildings, general obligation bonds may be issued for such purpose in accordance with the provisions of the general bond law.

History: L. 1899, ch. 278, § 1; L. 1909, ch. 259, § 1; L. 1917, ch. 329, § 1; L. 1920, ch. 69, § 1; R.S. 1923, 80-104; L. 1929, ch. 296, § 1; L. 1945, ch. 377, § 1; L. 1947, ch. 477, § 1; L. 1979, ch. 330, § 1; L. 2001, ch. 147, § 1; L. 2004, ch. 166, § 2; July 1.

80-105. Same; petition for election; notice.

Whenever a petition is presented to said township officers signed by one-third of the electors of said township requesting them to submit the question to a vote as to whether or not there shall be erected or purchased in said township buildings, in accordance with the provisions of this act, it shall be the duty of said township officers to call an election for said purpose and submit such proposition at the next general election, or at a special election if a general election will not occur within six months of the date of the presentation of the petition to said township officers, and give thirty days' notice thereof by posting five written or printed notices in as many public places thereof in said township, or, if the board deems it advisable, by publication in some paper in general circulation in said township. If a majority of the votes cast be in favor of the erection or purchase of township buildings, then it shall be the duty of said township officers to at once procure the land and cause said buildings to be erected, or to purchase said building as the case may be, at a cost not to exceed the amount specified in the call for said township election, and in the manner and under the restrictions that in the judgment of said board will procure the best buildings for the money expended.

History: L. 1899, ch. 278, § 2; L. 1909, ch. 259, § 2; R.S. 1923, 80-105; L. 1947, ch. 477, § 2; June 30.

80-107. Same; joint township halls; limitation on costs.

In any two or more adjoining townships in the same county, otherwise entitled to come within the provisions of this act, the township trustee, clerk and treasurer of such adjoining townships are authorized to submit to a vote of the electors of such townships the question of the erection of a joint township hall for the joint benefit and use of said two or more adjoining townships: *Provided*, That in no event shall the total cost of said joint building and lands exceed \$30,000.

History: L. 1920, ch. 69, § 3; March 22; R.S. 1923, 80-107.

80-108. Same; bonds; limitation.

Whenever two or more township boards authorized by virtue of an election held in such townships in the state of Kansas, as provided in [K.S.A. 80-107](#), to erect a joint township hall, the township boards of such townships are hereby authorized and empowered for

and on behalf of such townships to issue negotiable joint bonds of such townships in a sum not to exceed \$30,000, for the purpose of raising a fund to pay for a site and the erection and construction of such joint township hall and such bonds and the proceedings concerning the execution and issuance thereof shall be as provided by law.

History: L. 1920, ch. 69, § 4; March 22; R.S. 1923, 80-108.

80-109. Sale of real property; procedure.

(a) No real property belonging to any township shall be sold or disposed of without a unanimous vote of the township board and public notice of such sale or disposition containing the time, place and conditions thereof having been given at least once each week for three consecutive weeks prior thereto in a newspaper of general circulation in the township. Such sale shall be made to the highest bidder except that the board shall have the right to reject any or all bids. If, within 45 days after the first publication of such notice a petition signed by not less than 2% of the qualified electors of the township is filed with the county election officer, such real property shall not be sold or disposed of unless the proposition of sale or disposition of such property is submitted to a vote of the electors of the township at a question submitted election called therefor. The election shall be called, noticed and held in the manner provided by K.S.A. 10-120, and amendments thereto. If a majority of the votes cast at any such election authorizes any sale or disposition, such sale or disposition shall be made upon the notice hereinbefore prescribed by publication, to the highest bidder, except that the township board shall have the right to reject any or all bids.

(b) No personal property with a value of \$1,000 or more belonging to any township shall be sold or disposed of without approval of the township board. Public notice of the sale or disposition of the personal property containing the time, place and conditions of the sale shall be published at least once in a newspaper of general circulation in the township. The sale shall be by competitive bid and shall be awarded to the highest and best bidder. The board may reject any or all bids and may resubmit the personal property for new competitive bid procedures.

(c) In lieu of procedures for the sale of personal property established in subsection (b), a township board may adopt a resolution establishing an alternate methodology for disposal of personal property. Such alternate methodology for the disposal of personal property shall contain procedures for:

- (1) Public notice of the sale or disposition;
- (2) a description of the property to be sold;
- (3) the method of sale, including, but not limited to, fixed price, negotiated bid, sealed bid, public auction or auctions or any other method of sale that allows public participation.

(d) The provisions of this section shall not apply to or restrict the conveyance of real property by any township to the state of Kansas, the title to which was previously conveyed to such township by the state of Kansas.

History: L. 1909, ch. 258, § 1; R.S. 1923, 80-109; L. 1994, ch. 232, § 1; L. 2008, ch. 19, § 2; July 1.

80-110. Same; notice of election.

The township board, by a majority vote at any regular meeting of said board or at a special meeting called for that purpose, may submit a proposition to sell any such land at a general or special election: *Provided*, That such question shall be submitted not less than ten days before the day of such election, and notice thereof shall be given by not less than five printed or written notices posted in five public places in said township at least ten days before the date fixed for such election.

History: L. 1909, ch. 258, § 2; March 30; R.S. 1923, 80-110

80-111. Same; deeds.

The township board is authorized and directed to make and execute proper deeds for such land as herein mentioned.

History: L. 1909, ch. 258, § 3; March 30; R.S. 1923, 80-111.

80-112. Disposition of certain real property by certain townships; notice and sale; use of proceeds.

Any township owning real property which is located in a city of the first, second or third class, is hereby authorized without a vote of the people, to dispose of such property, or any township located in a county having a population of less than two thousand five hundred (2,500) and an assessed tangible valuation of less than eleven million dollars (\$11,000,000) and owning a township hall which was converted from a schoolhouse to such purposes, is hereby authorized without a vote of the people to dispose of such township hall and the site on which it is located if owned by said township, at public sale, upon thirty (30) days' notice in the official county paper, for cash, at the best price obtainable therefor, and to use the proceeds of such sale for the construction or repair of other township property in such township, or if not used for such purpose within one (1) year from the date of such sale, then such money arising from such sale shall become a part of the general fund of the township: *Provided*, That if the real property was purchased, or improvements purchased or constructed, by using moneys from some fund other than the general fund of the township, then the proceeds of the sale shall be used for the purchase of real property or for the construction or repair of similar facilities, or if not used for such purpose within one (1) year, then the money arising from such sale shall become a part of the particular township fund from which moneys were originally expended for such real property or improvements.

History: L. 1927, ch. 339, § 1; L. 1929, ch. 297, § 1; L. 1957, ch. 520, § 1; L. 1961, ch. 462, § 1; June 30

80-113. Bonds for reconstruction, repair and equipment of buildings; election.

The township board of any township is hereby authorized and empowered to issue its

general obligation bonds in an amount not to exceed one percent of the assessed tangible valuation of such township for the purpose of obtaining funds for the reconstruction, repair and equipment of township buildings: *Provided, however,* Such township shall not issue such bonds until and after an election therefor has been had, which election shall be held in accordance with the provisions of [K.S.A. 80-104](#) and [80-105](#).

History: L. 1949, ch. 507, § 1; April 9

80-114. Bonds for repairing and remodeling condemned hall; election after protest petition.

The officers of any township which has a township hall which has been condemned by the state fire marshal are hereby authorized to issue bonds in an amount not to exceed six thousand dollars (\$6,000) for the purpose of providing funds to repair and remodel such hall. Such bonds shall be issued as provided by law, but without an election: *Provided,* That before issuance of such bonds, such officers shall adopt a resolution authorizing the issuance of said bonds which shall be published once a week for three consecutive weeks in a newspaper of general circulation in such township and, if within twenty days after the date of the last publication, there is filed with the township clerk of such township a petition protesting the issuance of said bonds, signed by not less than thirty percent (30%) of the qualified electors in said township as determined by the votes cast for the candidate receiving the greatest number of votes for an elective township officer at the last preceding general election, said bonds shall not be issued until the question of their issuance shall be submitted to the vote of the qualified electors of the township at any regular election or special election called for such purpose and a majority of those voting on such question vote in favor of such issuance. Such election, if one is called, shall be governed by the provisions of the general bond law.

History: L. 1949, ch. 508, § 1; June 30.

80-115. Tax levies for special fund for township hall; use of moneys.

The township board of any township which has a township hall, or which uses part of a township water department building or township fire department building as its township hall, is hereby authorized and empowered to levy an annual tax on the taxable tangible property in such township, to provide a special fund for the purpose of acquiring, repairing, equipping and maintaining such township hall.

History: L. 1951, ch. 516, § 1; L. 1953, ch. 461, § 1; L. 1957, ch. 521, § 1; L. 1969, ch. 467, § 1; L. 1970, ch. 385, § 4; L. 1986, ch. 388, § 2; L. 1999, ch. 154, § 52; May 27.

80-118. Payment of judgments by certain townships; no-fund warrants.

The township board of any township located in any county having a population of more than five thousand five hundred (5,500) and not more than six thousand five hundred (6,500) and a taxable tangible valuation of not more than twenty-five million dollars (\$25,000,000) is hereby authorized to issue no-fund warrants of such township for the

purpose of paying any judgment rendered against such township in an amount necessary for the payment thereof.

History: L. 1969, ch. 447, § 1; April 15.

80-119. Same; tax levies to pay warrants; issuance, registration, redemption and form of warrants.

Whenever no-fund warrants are issued under the authority of this act the township board shall make a tax levy or levies sufficient to pay such warrants and the interest thereon. Such warrants may mature serially at such yearly dates as to be payable by not more than five tax levies. Such warrants shall be issued, registered, redeemed and bear interest in the manner and be in the form prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by such section and may be issued without the approval of the state board of tax appeals.

History: L. 1969, ch. 447, § 2; L. 1999, ch. 154, § 53; L. 2008, ch. 109, § 119; L. 2014, ch. 141, § 126; July 1.

80-120. Transfer of township powers and duties to county; procedure; creation of special fund in certain cases.

(a) The township board of any township may adopt a resolution proposing to transfer all powers, duties and functions of the township board to the board of county commissioners of the county in which such township is located. Such resolution shall be submitted to the qualified electors of the township at an election called and held thereon. Such election shall be called and held in the manner provided by the general bond law. If a majority of the voters voting thereon vote in favor thereof, all powers, duties and functions of such township board shall be transferred to the board of county commissioners of the county in which such township is located.

(b) Upon approval of the resolution by the voters, the township board shall pay over to the county treasurer of such county any and all unused money or funds or surplus funds in the hands of such township board which have been received or acquired by such township from any source. Upon receipt of the funds and moneys, the county treasurer shall credit the same to a special fund for each such township unless the board of county commissioners by a 2/3 vote of all members of the board determines that all duties and funds transferred by the township shall be assumed by the county in which case such funds shall be deposited in the county general fund.

If a special fund is created, the board of county commissioners shall expend the moneys in such special fund for the exercise of the powers, duties and functions imposed by law upon township boards in the township from which it was received. The county treasurer shall credit and transfer to such special fund of each township all tax moneys in the treasurer's hands on the date the resolution was approved by the voters which were received by the treasurer in payment of taxes levied by such township for such purposes and all such taxes thereafter collected by the treasurer. The treasurer shall credit and transfer all other moneys in the treasurer's hands on the date the resolution was approved

by the voters which were received by the treasurer for the use of such township for such purposes.

(c) Upon approval of the resolution by the voters, the township board shall turn over and deliver to the board of county commissioners of such county any and all assets and property such township has acquired. Following the transfer of all assets and property to the board of county commissioners, the township board of such township shall be and is hereby abolished.

(d) Unless the board of county commissioners determines that all duties and funds of the township shall be assumed by the county as provided in subsection (b), on or before the first Monday in July of each year the board shall prepare a budget of expenditures for the exercise of the powers, duties and functions transferred to the county. The board shall itemize the expenses and amounts and the purposes therefor. Subject to the same limitations imposed by law on township boards, the board of county commissioners are hereby authorized to levy a tax upon all assessed taxable tangible property of the township sufficient to raise the amount for such expenditures. The money derived from such levy shall be deposited in the county treasury and credited to the special fund established pursuant to subsection (b).

History: L. 1998, ch. 105, § 1; L. 2008, ch. 163, § 25; July 1.

80-121. Acquisition of land for township by board of county commissioners; procedure; use of land; bonds.

(a) The township board of Lecompton township located in Douglas county, by resolution, may request the board of county commissioners of Douglas county to acquire land by purchase or eminent domain for such township. The resolution shall describe the land which the township desires to be acquired and the purpose for which it is to be acquired. Such land shall be located in the township.

The board of county commissioners shall call and hold a hearing on such resolution. Notice of the hearing shall be published at least once each week for two consecutive weeks in a newspaper of general circulation in the township. At such hearing, any person who desires to appear and speak shall be given the opportunity to be heard.

(b) Following such hearing, the board of county commissioners may adopt a resolution of intent to acquire the land, or any portion of such land, described in the petition submitted by the township board. If the board of county commissioners determines that land other than that described in the petition is more suitable for the township purposes, the board may adopt a resolution of intent to acquire such other land for the township.

Any resolution adopted pursuant to this subsection shall be published at least once each week for two consecutive weeks in a newspaper of general circulation in the township. If within 30 days following the date of last publication, a petition signed by at least 5% of the qualified electors of the township is filed with the county election officer, no land shall be acquired pursuant to this section unless the question is submitted to and approved by a majority of the qualified electors of the township voting at an election thereon. Such election shall be called and held in the manner provided by the general

bond law.

(c) If a sufficient petition is not filed or if the question has been submitted and approved at an election as provided by subsection (b), the board of county commissioners shall acquire, by purchase or eminent domain, the land described in the resolution of intent. Upon acquisition of such land, the board of county commissioners shall convey title thereto to the township. The

township shall reimburse the county for all expenses incurred by the county relating to the acquisition of such land, including notice and election expenses.

(d) No more than three acres of land may be acquired pursuant to this section. Any land acquired pursuant to this section shall be used for township purposes.

(e) The township board may construct, purchase or lease buildings for township purposes. The board may join with any corporation, association, society or lodge in the construction or purchase and use of buildings or land acquired pursuant to this section, upon such terms and conditions as may be agreed upon by such township and corporation, association, society or lodge.

(f) The township board may issue general obligation bonds of the township to finance the costs of the acquisition of land and the construction and acquisition of township buildings. No such bonds shall be issued unless such issuance is submitted to and approved by a majority of the qualified electors of the township voting at an election called and held on such issuance. Such election shall be called and held in the manner provided by the general bond law. The question of issuance of bonds may be submitted at any election held pursuant to subsection (b).

History: L. 1999, ch. 146, § 3; July 1.

80-122. Township equipment reserve fund.

(a) The township board of any township which has a surplus in its general fund may provide, by adoption of a resolution, for a township equipment reserve fund to finance the acquisition of equipment. Moneys not to exceed 25% annually of the township general fund may be budgeted and transferred to such fund. For the purposes of this act, equipment shall include machinery, vehicles and any other equipment or personal property.

(b) Moneys credited to such fund from annually budgeted transfers shall not thereafter be subject to the provisions of K.S.A. 79-2925 to 79-2937, and amendments thereto. In making the budgets of such township, the amounts credited to, and the amount on hand in, such equipment reserve fund and the amount expended therefrom shall be shown thereon for the information of the taxpayers of such township. Moneys in such fund may be invested in accordance with the provisions of K.S.A. 12-1675, and amendments thereto, with interest thereon credited to such fund.

(c) If the township board determines that money which has been credited to such fund or any part thereof is not needed for the purposes for which so budgeted or transferred, the board may transfer, by adoption of a resolution, such amount not needed to the

general fund and such retransfer and expenditure thereof shall be subject to the budget requirement provisions of K.S.A. 79-2925 to 79-2937, and amendments thereto.
History: L. 2008, ch. 16, § 1; July 1.

AG Opinion No. 88-138 Township Expenditures, Hiring an Attorney & Annexations

September 16, 1988

Re: Cities and Municipalities--Additions, Vacation, and Lot Frontage; Annexation by Cities--Conditions Which Permit Annexation; Ordinances; Actions Challenging Validity

Townships and Township Officers--General Provisions--Corporate Status; Powers

Synopsis: It is our opinion that a township may expend moneys from the proper township fund in order to hire an attorney for township purposes. Such purposes may include appearing on behalf of the township at a public hearing concerning proposed annexation pursuant to K.S.A. 1987 Supp. 12-520. However, a township may not expend public moneys to hire an attorney merely for lobbying against an annexation on behalf of the township or representing the legal interests of private landowners. Cited herein: [K.S.A. 10-1101](#); K.S.A. 1987 Supp. 12-519; 12-520; 12-520a; 12-520a(e); 12-521; 77-201 Thirteenth; 79-1962; [K.S.A. 79-2934](#); 80-101.

Mr. Donald Wayne Estes
Shawnee Township Trustee
4804 Quivira Drive
Shawnee Mission, Kansas 66216

Dear Mr. Estes:

As Shawnee Township Trustee you request our opinion on using township funds to hire an attorney to represent the township in proceedings connected with the proposed annexation of township property by the city of Shawnee. You inform us that the proposed annexation is proceeding pursuant to [K.S.A. 12-520](#) et seq. and that if it is successful your township will be left with very little unincorporated area and no residents. You also inform us that the landowners of the township oppose the annexation and prefer to remain part of the township.

In general, a township is a territorial district, subordinate to a county, the inhabitants of which are vested with political and administrative powers for regulating their own local affairs. 1 McQuillan, *Municipal Corporation*, § 1.30 (1987). [K.S.A. 80-101](#) et seq. sets forth the basic powers and duties of Kansas townships. The authority to appoint attorneys and make necessary contracts is discussed in [K.S.A. 80-101](#) which states:

"Each organized township in this state shall be a body politic and corporate, and in its proper name sue and be sued, and may appoint all necessary agents and attorneys in that behalf, and may make all contracts that may be necessary and convenient for the exercise of its corporate powers."

Thus, a township has authority to hire an attorney in order to bring or defend a suit or when "necessary and convenient for the exercise of its corporate powers." The only restrictions upon expenditures made to hire an attorney are (1) any applicable budgetary laws and (2) whether it properly exercises a corporate power of the township.

K.S.A. 1987 Supp. 79-1962 establishes limitations upon the levy of taxes by a township. While this authority does not establish a specific fund for attorneys' fees, it does discuss

a tax levy for the township general fund. [K.S.A. 80-1422](#), which allows certain township officials to receive additional compensation from the general fund, evidences the propriety of paying employment compensation from the general fund. Moreover, use of general funds to pay the costs of certain township business appears to be a township corporate purpose.

[K.S.A. 79-2934](#) limits expenditures from funds appropriated for another fund or purpose and [K.S.A. 10-1101](#) et seq. limits the ability of municipalities to incur debt. The established budget of Shawnee township will determine the availability of funds for the proposed purpose of hiring an attorney. Assuming that the proper funds are available, it is our opinion that a township may hire an attorney in order to represent the township in matters within the scope of township purposes. See also 87 C.J.S., Towns, § 54 (1954), and [Emporia Township v. Williams, 149 Kan. 860, 865 \(1939\)](#).

The second issue becomes to what degree and in what capacity a township is authorized to protest a proposed annexation and if that involvement by the township can be characterized as a township corporate purpose sufficient to permit the employment of an attorney.

K.S.A. 1987 Supp. 12-519 et seq. discusses annexation of territory by cities. K.S.A. 1987 Supp. 12-520a(d)(2) requires that a notice of the resolution considering annexation be sent to the governing body of the township where the land to be annexed is located. K.S.A. 1987 Supp. 12-520a(e) allows all interested persons to be heard at the public hearing concerning annexation. K.S.A. 1987 Supp. 77-201 Thirteenth states that in construction of the statutes of this state, "person" may be extended to mean bodies politic and corporate. A township is such a body, pursuant to [K.S.A. 80-101](#), and may therefore be considered a person. Therefore, K.S.A. 1987 Supp. 12-520a(c) allows and authorizes a township to speak at the public hearing. Thus, it is our opinion that hiring an attorney to appear at such a public hearing on behalf of the township is a permissible use of public moneys for an authorized corporate purpose.

We have been informed that the city of Shawnee is proceeding under K.S.A. 1987 Supp. 12-520. Subsection (g) of that provision allows a protesting landowner "to maintain an action ... challenging the authority of the city to annex the land and the regularity of the proceedings...."

Previous Kansas case law discussed standing to challenge annexation. In [Fairfax Drainage District v. City of Kansas City, 190 Kan. 308 \(1968\)](#), the court did not permit a collateral challenge to the annexation proceedings to be brought in the name of the drainage district. Enacted after this case, K.S.A. 1987 Supp. 12-520, statutorily authorized court challenges by any owner of land annexed by a city under authority of that section. It did not, however, extend legal standing to include other persons or entities.

After enactment of [K.S.A. 12-520](#), the Kansas court again discussed standing to challenge annexation proceedings in [City of Lenexa v. City of Olathe, 229 Kan. 391 \(1981\)](#). The court differentiated between annexations proceeding pursuant to [K.S.A. 12-520](#) and [12-521](#): "Syl. ¶ 2: 'Under the statutes pertaining to the annexation of land by cities ([K.S.A. 12-519](#) et seq.), where a dispute arises as to the annexation of land which adjoins a city the only interested parties to the controversy are the city and the owner of the land which has been proposed for annexation. Other incorporated cities in the county do not have standing to challenge a proposed annexation where the land adjoins the city and the owner of the land consents to the annexation.'

"Syl. ¶ 3: 'In cases of a proposed annexation of land not adjoining the city, the rights of another incorporated city in the county must be considered and it has an interest which entitled it to challenge such an annexation in the district court.' "

Subsequent amendments to [K.S.A. 12-520\(g\)](#) have not extended legal standing to challenge annexation procedures to entities other than the landowners. If the annexation in question is proceeding pursuant to K.S.A. 1987 Supp. 12-520 and the land adjoins the city, the only interested parties to the controversy are the city of Shawnee and the individual landowners in the affected area. Thus, these are the only parties granted legal standing to challenge annexation proceedings.

There is a trend towards permitting municipal or quasi-municipal corporate parties to challenge governmental actions rather than only permitting individuals to challenge the validity of territorial annexation. McQuillin, *Municipal Corporations*, § 7.43 (1988). K.S.A. 1987 Supp. 12-521 evidences such a trend in Kansas; where the proposed annexation of land affects land not adjoining the city, other cities may challenge the annexation. However, a township is not a city. Moreover, the proposed annexation purportedly affects land adjoining the city and the annexation is therefore proceeding pursuant to [K.S.A. 12-520](#) not 12-521. Thus, Shawnee township apparently does not have standing to bring an action challenging the annexation proceedings.

If the township does not have legal standing to challenge annexation proceedings, the other purposes for hiring an attorney include lobbying for a particular annexation decision or representing the legal interests of the affected landowners. As previously recognized, [K.S.A. 80-101](#) allows the township to exercise corporate powers. It therefore becomes necessary to determine whether such corporate powers include the power to lobby against annexation or to fund the legal representation of private landowners who are protesting annexation.

Previous Attorney General opinions discuss the authority to approve expenditures of public funds for lobbying. As discussed in Opinions No. 81-216 and 83-52, such authority must exist either as expressly conferred or necessarily implied powers. Pursuant to K.S.A. 1987 Supp. 12-520a(e) a township is statutorily authorized to appear at the public hearing held on annexation. Beyond that, we find no authority allowing the township to lobby or intervene. It is therefore our opinion that a township may not hire an attorney merely to lobby against a proposed annexation.

Attorney General Opinion No. 86-177 discussed the authority of a watershed district to retain counsel in order to assist a private landowner with legal costs incurred as a result of litigation that peripherally affected the district. While the opinion noted that the district could possibly benefit from the employment of such an attorney, we opined that such employment was impermissible.

"It is a fundamental rule of law that a lawyer cannot permit a person who pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services. K.S.A. 7-125, DR 5-107(B). Thus, even if the district pays an attorney to represent a landowner before the IRS, that attorney owes no duty to the district. Since the interests of the individual landowner and those of the district may not always be the same, and since any appropriation of public money must be for a public purpose, such an expenditure would be impermissible. See [In re Page, 60 Kan. 842 \(1899\)](#)." (Emphasis added.)

It is our opinion that the legal principles enunciated in Opinion No. 86-177 also prohibit

the retainment of counsel by a township in order to represent individual landowners who are protesting annexation.

In summary, it is our opinion that a township may expend moneys from the proper township fund in order to hire an attorney for township purposes. Such purposes include costs connected with appearing on behalf of the township at proceedings where a township has legal authority or standing such as a public hearing concerning proposed annexation pursuant to K.S.A. 1987 Supp. 12-520. However, a township may not expend public moneys to hire an attorney in order to lobby against an annexation on behalf of the township or represent the legal interests of private landowners.

Very truly yours,

Robert T. Stephan
Attorney General of Kansas

Theresa Marcel Nuckolls
Assistant Attorney General

AG Opinion No. 97-62 CDL for Grader Operators

June 20, 1997

Re: Automobiles and Other Vehicles--Drivers' Licenses; Uniform Commercial Driver's License Act--Definitions; Road Grader Operator Required to Have a Commercial Driver's License

Synopsis: The operator of a township road grader used on the public roadways for transportation related purposes is required to obtain a commercial drivers' license. Cited herein: K.S.A. 8-2, 126; 8-2, 127; K.S.A. 1996 Supp. 8-2, 128; K.S.A. 8-2, 132; [49 U.S.C.A. §§ 31301, 31308](#); [49 C.F.R. §§ 383.3](#); 383.5.

Ridgeway Township Board c/o Morris I. Mercer
Treasurer
Rural Route 1
Carbondale, Kansas 66414

Dear Board Members:

You request our opinion regarding whether the Township's part time road grader operator is required to have a commercial driver's license (CDL). You state that while the grader has a gross weight of 33,000 pounds, it does not haul passengers or property and is not licensed or tagged by the State of Kansas. You believe that under these circumstances the grader is not a commercial motor vehicle as defined by federal law and therefore there is no requirement for obtaining a CDL to operate the grader. K.S.A. 8-2, 132 provides that, with certain exceptions, no person may drive a commercial motor vehicle unless the person has a valid commercial driver's license. Commercial motor vehicle is defined as:

"[A] motor vehicle designed or used to transport passengers or property, if:

"(1) The vehicle has a gross vehicle weight rating of 26,001 or more pounds or such lesser rating, as determined by rules and regulations adopted by the secretary [of the Department of Revenue], but shall not be more restrictive than the federal regulation;

"(2) the vehicle is designed to transport 16 or more passengers, including the driver; or

"(3) the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. 172, subpart F, effective January 1, 1991;" K.S.A. 1996 Supp. 8-2,128(f).

A motor vehicle is "every vehicle which is self-propelled, ... but not operated upon rails, except vehicles moved solely by human power and motorized wheel chairs;" K.S.A. 1996 Supp. 8-2,128(r). These definitions track those found in the federal law regulating commercial motor vehicle operators. [49 U.S.C.A. § 31301\(4\), \(11\)](#). See also [49 C.F.R. § 383.5](#).

While the terms in question have not been further defined by the State, the United States Department of Transportation, Federal Highway Administration (charged with administering the federal law regarding commercial motor vehicle operators, [49 U.S.C.A. § 31308](#)) has issued interpretations describing the applicability of the federal motor carrier

safety regulations to operators of construction equipment such as motor graders. Generally operators of off-road motorized construction equipment are not required to obtain a CDL even if the machinery is operated on a public highway for purposes of moving from one construction site to another. The basis for this conclusion is that such equipment is not designed to operate in traffic. However, when used for snow or leaf removal, the interpretations conclude that operators of such construction equipment are required to obtain a CDL because the equipment is being used on public roads and in furtherance of a transportation purpose, removal of snow or leaves from the road. The basis for the exception would no longer exist if the equipment is being used in traffic for transportation purposes. Regulatory Guidance Part 383--Commercial Driver's License Standards: Requirements and Penalties, [Section 383.3](#)--Applicability (Dec. 20, 1995). Further, the Federal Highway Administration has opined that State vehicle registration has no bearing on who is required to obtain a CDL (Regulatory Guidance, [Section 383.3](#)) and, with regard to the definitional requirement that a vehicle transport "passengers or property" to be considered a commercial motor vehicle, that "the construction equipment is itself the property being transported as it performs a service such as snowplowing." Regulatory Guidance, [Section 383.5](#)--Definitions. These interpretations have not been rescinded or amended and thus appear to be the current view of the Federal Highway Administration. Thus, an operator of a road grader would be required to have a CDL if the grader is used on the public roads for transportation purposes. If the grader is used only for off-road construction purposes, no CDL would be required.

The federal regulations do contain an exception for drivers employed by local units of government operating a commercial motor vehicle within the boundaries of that unit of government for the purpose of removing snow or ice, but only if the State exempts such individuals from the CDL requirements and only in certain emergency situations. [49 C.F.R. § 383.1\(d\)\(3\)](#). The State of Kansas has not chosen to exempt such drivers. See [K.S.A. 8-2.127](#).

In conclusion, because the State is obligated to comply with the federal law regarding operators of commercial motor vehicles ([49 U.S.C.A. § 31308](#) and [K.S.A. 8-2.126](#)) and the Kansas Director of Motor Vehicles follows the Federal Highway Administration's guidelines in interpreting and enforcing the state CDL law, it is our opinion that the operator of a road grader used on the public roadways for transportation related purposes is required to obtain a CDL.

Very truly yours,

Carla J. Stovall
Attorney General of Kansas

Julene L. Miller
Deputy Attorney General

KSA-Chapters 8 through 66 - Selected Road Related Statutes

8-304. Marking of vehicles of political subdivisions; vehicle defined.

As used in this act, "vehicle" means a passenger motor vehicle having a seating capacity of less than eight (8) persons and which is the property of a political subdivision of the state of Kansas. **History:** L. 1951, ch. 119, § 1; L. 1972, ch. 29, § 15; July 1.

8-305. Marking of vehicles of political subdivisions; how marked; exceptions.

All motor vehicles owned or leased by any political subdivision of the state of Kansas shall bear the name of the political subdivision owning or leasing such vehicle plainly printed on both sides thereof. This act shall not apply to the following: Municipal fire apparatus, police patrols and ambulances; passenger vehicles used by plain clothes police officers or community corrections personnel working in the employ of any political subdivision; and motor vehicles owned or leased by any municipal university. **History:** L. 1951, ch. 119, § 2; L. 1970, ch. 53, § 1; L. 1972, ch. 29, § 16; L. 1982, ch. 43, § 1; L. 1990, ch. 46, § 1; L. 1996, ch. 64, § 1; July 1.

8-306. Same; operation or control of unmarked vehicle; removal of officer or employee from office.

Any officer or employee of any political subdivision who operates or has under control any vehicle not lettered or numbered as required by this act or who violates any of the other provisions of this act shall be deemed guilty of malfeasance in office and shall be subject to removal from office or employment. **History:** L. 1951, ch. 119, § 3; L. 1972, ch. 29, § 17; July 1.

8-1442. "Official traffic-control devices" defined.

"Official traffic-control devices" means all signs, signals, markings, and devices, not inconsistent with this act, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

History: L. 1974, ch. 33, § 8-1442; July 1.

8-1505. Application of traffic laws to highway construction or maintenance operations.

Unless specifically made applicable, the provisions of this article except those contained in K.S.A. 8-1566 to 8-1568, inclusive, shall not apply to persons, motor vehicles and equipment while actually engaged in work upon a highway, but shall apply to such persons and vehicles when traveling to or from such work.

History: L. 1974, ch. 33, § 8-1505; July 1.

8-1507. Official traffic-control devices; required obedience; placement; presumptions.

(a) The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto, placed in accordance with the provisions of this act, unless

otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this act.

(b) No provision of this act for which official traffic-control devices are required shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic-control devices are required, such section shall be effective even though no devices are erected or in place.

(c) Whenever official traffic-control devices are placed in position approximately conforming to the requirements of this act, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

(d) Any official traffic-control device placed pursuant to the provisions of this act and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this act, unless the contrary shall be established by competent evidence.

History: L. 1974, ch. 33, § 8-1507; July 1.

8-1512. Placement, maintenance or display of unauthorized signs, signals, markings or devices.

(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.

(b) No person shall place or maintain nor shall any public authority permit upon any highway any official traffic control device bearing thereon any commercial advertising, except for business signs included as part of official motorist service panels or roadside area information panels approved by the secretary of transportation.

(c) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(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.

History: L. 1974, ch. 33, § 8-1512; L. 1995, ch. 188, § 4; July 1.

8-1513. Interference with official traffic-control devices or railroad signs or signals; misdemeanor.

No person, without lawful authority, shall attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any other part thereof. Violation of this section is a misdemeanor.

History: L. 1974, ch. 33, § 8-1513; L. 1984, ch. 39, § 3; Jan. 1, 1985.

8-1583 Putting glass, etc., on highway prohibited.

(a) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle upon such highway.

(b) Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(c) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

History: L. 1974, ch. 33, § 8-1583; July 1.

8-1913. Liability for damage to highway or structure.

(a) Any person driving any vehicle, object or contrivance upon any highway or highway structure shall be liable for all damage which said highway or structure may sustain as a result of any illegal operation, driving or moving of such vehicle, object or contrivance, or as a result of operating, driving or moving any vehicle, object or contrivance weighing in excess of the maximum weight in this act but authorized by a special permit issued as provided in this article.

(b) Whenever such driver is not the owner of such vehicle, object or contrivance, but is so operating, driving or moving the same with the express or implied permission of said owner, then said owner and driver shall be jointly and severally liable for any such damage.

(c) Such damage may be recovered in a civil action brought by the authorities in control of such highways or highway structure.

History: L. 1974, ch. 33, § 8-1913; July 1.

8-2003. Secretary of transportation to adopt sign manual.

The secretary of transportation shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this act for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system set forth in the most recent edition of the manual on uniform traffic-control devices for streets and highways and other standards issued or endorsed by the federal highway administrator.

8-2005. Local traffic-control devices; highways and streets designated as connecting links; township roads in certain counties.

(a) Local authorities in their respective jurisdictions shall place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this act or local traffic ordinances or to regulate, warn or guide traffic. All such traffic-control devices hereafter erected shall conform to the state manual and specifications.

(b) Local authorities in exercising those functions referred to in subsection (a) shall be subject to the direction and control of the secretary of transportation with respect to highways and streets designated by the secretary as connecting links in the state highway system.

History: L. 1974, ch. 33, § 8-2005; L. 1975, ch. 427, § 54; L. 2003, ch. 87, § 1; July 1.

(c) In townships located in Douglas, Johnson, Riley, Shawnee and Sedgwick counties, the township board shall place and maintain traffic-control devices, other than regulatory signs, on township roads under the board's jurisdiction. In addition, such township board shall place and maintain regulatory signs on township roads under the board's jurisdiction consistent with resolutions of the board of county commissioners of the county in which the township road is located. For this purpose, a regulatory sign is a sign setting forth a regulation, the violation of which subjects the operator of the motor vehicle to fine, imprisonment, or both.

Nothing in this subsection shall be construed as precluding the board of county commissioners from placing and maintaining traffic-control devices on township roads, if the board determines that traffic-control devices or signs placed by a township are inadequate, but the board of county commissioners shall have no obligation to do so.

History: L. 1974, ch. 33, § 8-2005; L. 1975, ch. 427, § 54; L. 2003, ch. 87, § 1; July 1.

8-2011. Removal of traffic hazards on private property.

(a) It shall be the duty of the owner of real property to remove from such property any tree, plant, shrub or other obstruction, or part thereof, which, by obstructing the view of any driver, constitutes a traffic hazard.

(b) When the secretary of transportation or any local authority determines upon the basis of an engineering and traffic investigation that such a traffic hazard exists, the secretary or such local authority shall notify the owner and order that the hazard be removed within ten (10) days.

(c) The failure of the owner to remove such traffic hazard within ten (10) days shall constitute an offense punishable by a penalty of ten dollars (\$10) and every day said owner shall fail to remove it shall be a separate and distinct offense.

History: L. 1974, ch. 33, § 8-2011; L. 1975, ch. 427, § 59; Aug. 15.

12-2901. Purpose of act.

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.

History: L. 1957, ch. 100, § 1; March 25.

12-2902. Short title.

This act may be cited as the interlocal cooperation act.

History: L. 1957, ch. 100, § 2; March 25.

12-2903. Definitions.

As used in the interlocal cooperation act:

(a) "Public agency" means:

(1) Any county, township, city, school district, library district, road district, drainage district, sewer district, water district or fire district;

- (2) any entity created pursuant to K.S.A. 12-2901 *et seq.* or chapter 72 of the Kansas Statutes Annotated, and amendments thereto;
- (3) any other municipal corporation, quasi-municipal corporation or political subdivision of this state or of any other state which is not specified in paragraphs (1) and
- (4) any state officer; and
- (5) any agency or instrumentality of this state or any other state or of the United States.
- (b) "State" means a state of the United States and the District of Columbia.
- (c) "Private agency" means an individual, firm, association or corporation.
- (d) "State officer" shall mean the governor, attorney general, secretary of state, state treasurer and insurance commissioner of the state of Kansas.
- (e) "Native American Indian tribes" shall mean federally-recognized Native American Indian tribes.
- (f) "Gaming compact" shall mean a gaming compact as defined by K.S.A. 46-2301, and amendments thereto.

History: L. 1957, ch. 100, § 3; L. 1968, ch. 221, § 1; L. 2002, ch. 126, § 1; May 23.

12-2904. Interlocal agreements by public agencies; specifications; approval of attorney general, exceptions.

(a) Subject to the limitations of subsection (g), any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state including but not limited to those functions relating to economic development, public improvements, public utilities, police protection, public security, public safety and emergency preparedness, including but not limited to, intelligence, antiterrorism and disaster recovery, libraries, data processing services, educational services, building and related inspection services, flood control and storm water drainage, weather modification, sewage disposal, refuse disposal, park and recreational programs and facilities, ambulance service, fire protection, the Kansas tort claims act or claims for civil rights violations, may be exercised and enjoyed jointly with any other public agency of this state or with any private agency, and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public or private agency may exercise and enjoy all of the powers, privileges and authority conferred by this act upon a public agency.

(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. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(c) Any public agency may enter into agreements with Native American Indian tribes for joint or cooperative actions. Such agreements shall be considered to be an interlocal agreement and shall be subject to the procedures and limitations of the interlocal cooperation act.

The provisions of this subsection shall not be construed as authorizing a public agency to enter into a gaming compact pursuant to the interlocal cooperation act.

- (d) Any such agreement shall specify the following:
- (1) Its duration.
 - (2) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto.
 - (3) Its purpose or purposes.
 - (4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.
 - (5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.
 - (6) Any other necessary and proper matters.

(e) In addition to the requirements of subsection (d), if the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement also shall contain the following:

- (1) Provision for an administrator or a joint board or one of the participating public agencies to be responsible for administering the joint or cooperative undertaking. In the case of a joint board public agencies party to the agreement shall be represented.
- (2) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.

(f) No agreement made pursuant to this act shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, such performance may be offered in satisfaction of the obligation or responsibility.

(g) Every agreement made hereunder, except agreements between two or more public agencies establishing a council or other organization of local governments for the study of common problems of an area or region and for the promotion of intergovernmental cooperation, prior to and as a condition precedent to its entry into force, shall be submitted to the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state. The attorney general shall approve any agreement submitted hereunder unless the attorney general shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public and private agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 90 days of its submission shall constitute approval thereof.

History: L. 1957, ch. 100, § 4; L. 1968, ch. 221, § 2; L. 1972, ch. 48, § 1; L. 1975, ch. 74, § 1; L. 1975, ch. 75, § 1; L. 1979, ch. 55, § 1; L. 1979, ch. 56, § 1; L. 1986, ch. 83, § 1; L. 2002, ch. 126, § 2; L. 2004, ch. 148, § 1; July 1.

12-2904a. Same; powers and duration of separate legal entities created thereby; certain functions prohibited.

(a) Any interlocal agreement entered into under the provisions of K.S.A. 12-2901 *et seq.*, and amendments thereto, may authorize the creation of a separate legal entity to conduct the joint or cooperative action provided for in the agreement. Such separate legal entity shall constitute a body corporate and politic, and shall have, in addition to any other powers reasonably necessary to the exercise of its function under the agreement, the following powers to:

- (1) Sue and be sued in its corporate name;
- (2) take and hold any property, real or personal, in fee simple or otherwise;
- (3) sell, lease, lend or otherwise transfer any property or interest in property owned by it;
- (4) make contracts; and
- (5) have and use a corporate seal.

Any such separate legal entity shall not constitute a municipality within the meaning of K.S.A. 10-1101, and amendments thereto, or a political subdivision of the state under any provision of the law of this state establishing limits on bonded indebtedness.

(b) In addition to its other powers, any separate legal entity referred to in this section shall be authorized, subject to any limitations imposed by contract, to issue bonds, notes or other evidence of indebtedness, in its own name, on behalf of the public agencies that are or become parties to the agreement creating the separate legal entity for those purposes for which such public agencies are authorized pursuant to the constitution and laws of this state to issue bonds, notes or other evidence of indebtedness. Such bonds, notes or other indebtedness may be payable from or secured by any property, interest or income of the separate legal entity, from whatever source derived, but shall not constitute a charge against or indebtedness of any public agency on behalf of which such bonds, notes or other indebtedness are issued. In issuing such bonds, notes or other indebtedness, the separate legal entity shall act as the constituted authority of the public agencies on behalf of which such bonds, notes or other indebtedness are issued, and the interest on such bonds, notes or other indebtedness shall be exempt from taxation under the laws of this state. Nothing in this act shall be construed to authorize any separate legal entity to issue or sell bonds, notes or other evidence of indebtedness, or use the proceeds thereof, to purchase, condemn, or otherwise acquire a utility plant or distribution system owned or operated by a regulated public utility as defined by K.S.A. 66-104 and amendments thereto.

(c) The duration of any separate legal entity referred to in this section may be perpetual or as otherwise provided in the agreement under which it was created; however, any property owned or held by such separate legal entity shall become the property of the public agencies that are parties to such agreement, according to the terms of that agreement or as otherwise determined according to equitable principles, if and when at any time no bond, note or other indebtedness of the authority is not currently outstanding and unpaid. No property of such separate legal entity shall inure to the benefit of any private individual, corporation or association other than for fair value received.

(d) No such separate legal entity shall operate or administer any arrangement or program under which any two or more municipalities, as defined in K.S.A. 75-6102, and amendments thereto, have agreed to pool their liabilities incurred as a result of negligent or wrongful act or omission of their employees or any other liabilities or losses incurred by such municipalities regardless of the cause thereof.

History: L. 1987, ch. 60, § 8; May 28.

12-2905. Same; filing; status; damage or liability actions.

Prior to its entry into force, an agreement made pursuant to this act shall be filed with the register of deeds of the county where such political subdivision or agency of the state government is located and with the secretary of state. In the event that an agreement entered into pursuant to this act is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States, said agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public or private agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

History: L. 1957, ch. 100, § 5; March 25.

12-2906. Same; additional approval of certain agreements; insurance-pooling agreements.

In the event that an agreement made pursuant to this act shall deal in whole or in part with the provisions of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by the state officer or agency as to all matters within such officer's or agency's jurisdiction in the same manner and subject to the same requirements governing the action of the attorney general pursuant to K.S.A. 12-2904(f), and amendments thereto. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorney general.

Any agreement to participate in a group-funded pool or any other insurance-pooling arrangement shall be subject to the provisions of K.S.A. 12-2616 to 12-2629.

History: L. 1957, ch. 100, § 6; L. 1987, ch. 74, § 15; May 28.

12-2907. Same; funds; property, personnel and service.

Any public agency entering into an agreement pursuant to this act may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish: *Provided*, That the board of county commissioners of any county having a population of not less than forty-two thousand (42,000) nor more than fifty-eight thousand (58,000) with a total

assessed taxable tangible valuation of more than eighty million dollars (\$80,000,000) may use the money heretofore or hereafter collected from tax levies made under the authority of K.S.A. 19-1569 and 19-1570 or acts amendatory thereof to pay the county's share of the cost to provide for the acquisition of building sites and parking areas, design, construction, furnishing, and equipping of a combined unit of courthouse, city hall, jail and parking facilities in cooperation with the city which is the county seat of such county.

History: L. 1957, ch. 100, § 7; L. 1961, ch. 76, § 1; June 30.

12-2908. Contracts between certain municipalities.

(a) When used in this act, "municipality" means a city, county or township.

(b) Any municipality may contract with any municipality to perform any governmental service, activity or undertaking which each contracting municipality is authorized by law to perform. The contract shall be authorized by the governing body of the municipality and shall state the purpose of the contract and the powers and duties of the parties thereunder.

(c) A contract entered into pursuant to this section shall not be regarded as an interlocal agreement under the provisions of K.S.A. 12-2901 *et seq.*, and amendments thereto.

History: L. 1982, ch. 58, § 1; L. 1983, ch. 69, § 1; L. 1992, ch. 75, § 1; July 1.

Article 39.--GOVERNMENTAL ORGANIZATION 12-3901. Purpose of act.

It is the purpose of this act to authorize and permit political and taxing subdivisions of this state to more efficiently and effectively serve the needs of their constituents by consolidating or cooperating in the consolidation of operations, procedures and functions of offices and agencies of such subdivisions which may be more efficiently and effectively exercised or provided by a single office or agency.

History: L. 1974, ch. 426, § 1; July 1.

12-3902. Political and taxing subdivisions defined.

For the purposes of this act all references to "political and taxing subdivisions of this state" shall mean and include counties, townships, cities, school districts, library districts, park districts, road districts, drainage or levee districts, sewer districts, water districts, fire districts and taxing subdivisions created and established under the laws of the state of Kansas.

History: L. 1974, ch. 426, § 2; July 1.

12-3903. Consolidation of operations, procedures and functions by a political and taxing subdivision or by two or more subdivisions; procedure; elimination of elective office, election.

(a) Whenever the governing body of any political or taxing subdivision of this state shall by resolution determine that duplication exists in the operations, procedures or functions of any of the offices or agencies of such subdivision or that the operations, procedures or functions of any of the offices or agencies thereof can be more efficiently and effectively exercised or provided as a consolidated activity performed by a single office or agency,

or whenever the governing body of any two or more political or taxing subdivisions of this state shall by the passage of identical resolutions determine that duplication exists in the operations, procedures or functions of offices or agencies of such subdivisions or that the operations, procedures or functions of any of the offices or agencies thereof can be more efficiently and effectively exercised or provided as a consolidated activity performed by a single intergovernmental office or agency or by a single office or agency of one of the participating political or taxing subdivisions, such governing body or governing bodies are hereby authorized to consolidate any or all of the operations, procedures or functions performed or carried on by such offices or agencies by the passage of a resolution or identical resolutions setting out the time, form and manner of consolidation and designating the surviving office or agency.

(b) The elimination of an elective office by consolidation under the provisions of this act shall be subject to the approval of a majority of the electors of the political or taxing subdivision served by such office, voting in the next regular general election of the county in which the office of governor is elected, and no elective office shall be eliminated prior to such election. Any such proposed consolidation which eliminates any such elective office shall provide that the elimination of such office shall become effective upon the date of normal expiration of the term of such office. Any such proposed consolidation which eliminates any such elective office shall not be voted on by the governing body of the political or taxing subdivision until a special public hearing is held within the political or taxing subdivision. Notice of such special hearing shall be published in a newspaper of general circulation in the political or taxing subdivision once each week for two consecutive weeks prior to the hearing. The first publication shall not be less than 21 days prior to such hearing. Any elected officer whose office would be eliminated in such consolidation and any other interested party shall be given an opportunity to appear and offer testimony at any of such hearings.

(c) Whenever the statutorily mandated duties of any elected county official are proposed for elimination, by transfer or otherwise, the question of the elimination of any such duties shall be considered as an elimination of the elective office itself within the meaning of this section, and shall be subject to an election prior to such elimination as required by subsection (b). The provisions of this subsection shall not preclude the transfer of duties of an elected office with the consent of the affected elected official.

History: L. 1974, ch. 426, § 3; L. 1988, ch. 80, § 1; L. 1991, ch. 61, § 1; April 25.

12-3904. Same; procedures, functions; petition; election.

Whenever a petition, signed by not less than 10% of the qualified electors of any political or taxing subdivision of this state or any two or more political or taxing subdivisions of this state, shall be filed with the governing body of such subdivision or subdivisions requesting that a proposition for the consolidation of specified operations, procedures and functions of designated offices or agencies of such subdivision or subdivisions be submitted to the electors thereof, such governing body or governing bodies shall submit such proposition at an election called and held for such purpose in the manner provided by the general bond law. The wording of such a petitioned-for proposition affecting the functions of two or more subdivisions shall be expressed in general terms. If the proposition is approved by a majority of the electors voting thereon, the governing body or governing bodies shall develop and implement a plan for the consolidation consistent

with the intent of the proposition. If such proposition eliminates an elective office by consolidation, the governing body of such subdivision or subdivisions shall provide for the hearing by K.S.A. 12-3903, and amendments thereto. The governing body shall submit such proposition at the next regular general election of the county in which the office of governor is elected in accordance with K.S.A. 12-3903, and amendments thereto.

History: L. 1974, ch. 426, § 4; L. 1988, ch. 80, § 2; L. 1992, ch. 77, § 1; July 1.

12-3905. Same; subdivision not relieved of obligation or responsibility imposed by law.

No consolidation proceeding or agreement made pursuant to this act shall relieve any political or taxing subdivision of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, said performance may be offered in satisfaction of the obligation or responsibility.

History: L. 1974, ch. 426, § 5; July 1.

19-2612. Removal or cutting of hedge fences, trees and shrubs; cutting weeds; removing signboards and board fences; expenses.

The board of county commissioners of each county in the state are authorized to cut all hedge fences, trees and shrubs growing upon the highway right of way or on right of way boundary, within three hundred fifty (350) feet of a railroad grade crossing or abrupt corner in the highway, and thereafter keep the same trimmed to provide clear vision, and to cut all weeds in the highways and thereafter keep the same cut so that the same shall not at any time be allowed to grow to a height obstructing clear vision; to remove all signboards, billboards, and board fences obstructing clear vision within three hundred fifty (350) feet of any such railroad crossing or abrupt corner in the highway: *Provided*, That nothing in this act shall apply to signs placed by any county or state association for the purpose of imparting historical information or traveling directions: *Provided, however*, That the board of county commissioners of any county in this state are hereby authorized to cause the removal of any hedge along any road in their respective counties, when in their judgment they, having first made suitable investigation of conditions, such hedge should be removed. The county may pay all expenses incident to removing such hedge out of the state and county road fund when applied to state and county roads and out of the county and township road fund when applied to county and township roads.

History: L. 1915, ch. 288, § 1; L. 1921, ch. 221, § 1; R.S. 1923, 19-2612; L. 1927, ch. 159, § 1; L. 1957, ch. 179, § 1; June 29.

21-5809. Trespassing on railroad property. (a) Trespassing on railroad property is:

- (1) Entering or remaining on railroad property, without consent of the owner or the owner's agent, knowing that it is railroad property; or
- (2) recklessly causing in any manner the derailment of a train, railroad car or rail-mounted work equipment.

- (b) Trespassing on railroad property is a:
- (1) Class A nonperson misdemeanor, except as provided in subsection (b)(2);
 - (2) severity level 8, nonperson felony if such trespassing results in a demonstrable monetary loss, damage or destruction of railroad property valued at more than \$1,500.
- (c) Subsection (a) shall not be construed to interfere with the lawful use of a public or private crossing.
- (d) Nothing in this section shall be construed as limiting a representative or member of a labor organization which represents or is seeking to represent the employees of the railroad, from conducting such business as provided under the railway labor act (45 U.S.C. 151, et seq.) and other federal labor laws.
- (e) As used in this section "railroad property" includes, but is not limited to, any train, locomotive, railroad car, caboose, rail-mounted work equipment, rolling stock, work equipment, safety device, switch, electronic signal, microwave communication equipment, connection, railroad track, rail, bridge, trestle, right-of-way or other property that is owned, leased, operated or possessed by a railroad company.

History: L. 2010, ch. 136, § 95; July 1, 2011.

21-5922. Interference with the conduct of public business in public buildings; aggravated interference with the conduct of public business.

- (a) Interference with the conduct of public business in public buildings is:
- (1) Conduct at or in any public building owned, operated or controlled by the state or any of its political subdivisions so as to knowingly deny to any public official, public employee or any invitee on such premises, the lawful rights of such official, employee or invitee to enter, to use the facilities or to leave any such public building;
 - (2) knowingly impeding any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion or intimidation or by force and violence or threat thereof;
 - (3) knowingly refusing or failing to leave any such public building upon being requested to do so by the chief administrative officer, or such officer's designee, charged with maintaining order in such public building, if such person is committing, threatens to commit or incites others to commit, any act which did or would if completed, disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures or functions being carried on in such public building;
 - (4) knowingly impeding, disrupting or hindering the normal proceedings of any meeting or session conducted by any judicial or legislative body or official at any public building by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting such meeting or session, or by any act designed to intimidate, coerce or hinder any member of such body or any official engaged in the performance of duties at such meeting or session; or
 - (5) knowingly impeding, disrupting or hindering, by any act of intrusion into the chamber or other areas designed for the use of any executive body or official, the normal proceedings of such body or official.
- (b) Aggravated interference with the conduct of public business is interference with the conduct of public business in public buildings, as defined in subsection (a), when in possession of any firearm or weapon as described in K.S.A. 2014 Supp. 21-6301 or 21-6302, and amendments thereto.

(c) (1) Interference with the conduct of public business in public buildings is a class A nonperson misdemeanor:

(2) Aggravated interference with the conduct of public business is a level 6, person felony.

History: L. 2010, ch. 136, § 147; L. 2011, ch. 30, § 42; July 1.

21-6002. Official misconduct.

(a) Official misconduct is any of the following acts committed by a public officer or employee in the officer or employee's public capacity or under color of the officer or employee's office or employment:

(1) Knowingly using or authorizing the use of any aircraft, as defined by K.S.A. 3-201, and amendments thereto, vehicle, as defined by K.S.A. 8-1485, and amendments thereto, or vessel, as defined by K.S.A. 32-1102, and amendments thereto, under the officer's or employee's control or direction, or in the officer's or employee's custody, exclusively for the private benefit or gain of the officer or employee or another;

(2) knowingly failing to serve civil process when required by law;

(3) using confidential information acquired in the course of and related to the officer's or employee's office or employment for the private benefit or gain of the officer or employee or another or to intentionally cause harm to another;

(4) except as authorized by law, with the intent to reduce or eliminate competition among bidders or prospective bidders on any contract or proposed contract:

(A) Disclosing confidential information regarding proposals or communications from bidders or prospective bidders on any contract or proposed contract;

(B) accepting any bid or proposal on a contract or proposed contract after the deadline for acceptance of such bid or proposal; or

(C) altering any bid or proposal submitted by a bidder on a contract or proposed contract;

(5) except as authorized by law, knowingly destroying, tampering with or concealing evidence of a crime; or

(6) knowingly submitting to a governmental entity a claim for expenses which is false or duplicates expenses for which a claim is submitted to such governmental entity, another governmental or private entity.

(b) (1) Official misconduct as defined in:

(A) Subsections (a)(1) through (a)(4) is a class A nonperson misdemeanor;

(B) subsection (a)(5) is a:

(i) Severity level 8, nonperson felony if the evidence is evidence of a crime which is a felony; and

(ii) class A nonperson misdemeanor if the evidence is evidence of a crime which is a misdemeanor; and

(C) subsection (a)(6) if the claim is:

(i) \$25,000 or more is a severity level 7, nonperson felony;

(ii) at least \$1,000 but less than \$25,000 is a severity level 9, nonperson felony; and

(iii) less than \$1,000 is a class A nonperson misdemeanor.

(2) Upon conviction of official misconduct a public officer or employee shall forfeit such officer or employee's office or employment.

(c) The provisions of subsection (a)(1) shall not apply to any use of persons or property which:

(1) At the time of the use, is authorized by law or by formal written policy of the governmental entity; **or**

(2) constitutes misuse of public funds, as defined in K.S.A. 2014 Supp. 21-6005, and amendments thereto.

(d) As used in this section, "confidential" means any information that is not subject to mandatory disclosure pursuant to K.S.A. 45-221, and amendments thereto.

History: L. 2010, ch. 136, § 166; July 1, 2011

24-126. Unlawful to construct fills and levees without prior approval of chief engineer, penalty; plans for levee, contents; approval of levee plans, considerations; fees; injunctions; rules and regulations.

(a) It shall be unlawful for any person, corporation, drainage or levee district, county, city or township, without first obtaining the approval of plans for the same by the chief engineer of the division of water resources, to construct, cause to be constructed, maintain or cause to be maintained, any levee or other such improvement on, along or near any stream of this state which is subject to floods, freshets or overflows, so as to control, regulate or otherwise change the flood waters of such stream. Any person, corporation, county, city, township or district violating any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment in the county jail for a period of not more than one year, or by both such fine and imprisonment. Each day any structure is maintained or caused to be maintained shall constitute a separate offense.

(b) Subject to the provisions of subsection (e), plans submitted for approval shall include maps, profiles, cross sections, data and information as to the effect upon upstream and downstream areas resulting from the proposed levee or other such improvement, the required fee as provided in subsection (c) and such other data and information as the chief engineer of the division of water resources may require.

(c) (1) Fill and levee approval fees shall be as follows:

Type Pre- Construction Construction In Progress

Major (Fill in defined floodway class C levee) \$500 \$1000

Moderate (Fill in floodplain without defined floodway class B levee) \$300 \$600

Minor (Fill in floodway fringe class A levee) \$100 \$200

(2) The construction in progress fee shall be applicable for projects where construction began prior to approval by the chief engineer. Such fee shall be in addition to any other penalty under law for unapproved fill or levee construction. Projects that require approval under both this act and obstructions in streams act, K.S.A. 82a-301 et seq., and amendments thereto, shall be required to pay only the greater of the two fees when seeking approval from the chief engineer.

(d) If the chief engineer finds from an examination of such plans and pertinent information that the construction of the proposed levee or other such improvement is feasible and not adverse to the public interest, the chief engineer shall approve the proposed levee or other such improvement. In determining whether or not the construction of any proposed levee or other such improvement designed so as to reduce flood risks to a chance of occurrence in any one year of 1% or less is adverse to the public interest, the chief engineer shall consider the following: (1) The effect upon areas downstream or upstream as a result of the construction of such proposed levee or other such improvement; and (2) the effect of the proposed levee or other such improvement and any other existing or proposed levees or other such improvements upon downstream and upstream areas. In the event any such levee or other such improvement is about to be constructed, is constructed or maintained by any person, corporation, county, city, township or district without approval of plans by the chief engineer, it shall be the duty of the attorney general, to file suit in a court of competent jurisdiction, to enjoin the construction or maintenance of such levee or other such improvement.

(e) For fills other than levees located in the floodway fringe within a participating community as defined and identified in the national flood insurance act, all required data and information shall be specified by rules and regulations adopted by the chief engineer. Within 90 days of receipt of plans and such data and information as required by the chief engineer for fills other than levees located in the floodway fringe within a participating community as defined and identified by the national flood insurance act, the chief engineer shall approve or disapprove the plans for such fills. If the chief engineer fails to approve or disapprove a plan within the 90-day period required by this section, such plan shall be deemed approved. The chief engineer shall provide, in writing, specific reasons for any disapproval which shall include any hydrologic and hydraulic analyses or other data upon which such disapproval is based.

(f) Prior to the adoption of a general plan of drainage and flood protection, as provided in K.S.A. 24-901, and amendments thereto, and the commencement of construction in carrying such plan into effect, the chief engineer of the division of water resources may give temporary approval for the repair and maintenance of any levee or other drainage work in existence on May 28, 1929; but such approval for such temporary repair and maintenance shall be without prejudice to withdrawal of such approval when a general plan shall be adopted. Nothing contained in this section shall apply to any drainage district heretofore organized under K.S.A. 24-401 et seq., and amendments thereto, and having property of an assessed valuation of \$50,000,000 or more.

(g) The chief engineer shall adopt such rules and regulations deemed necessary to administer and enforce the provisions of this section.

(h) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 2014 Supp. 82a-328, and amendments thereto.

History: L. 1929, ch. 176, § 71; L. 1951, ch. 261, § 2; L. 1981, ch. 397, § 1; L. 1991, ch. 56, § 27; L. 2002, ch. 138, § 1; July 1.

24-206. Penalty for obstructing ditch, drain or stream; damages.

If any person shall maliciously or willfully fill up or obstruct any ditch, drain, or watercourse, he shall forfeit and pay to the county in which said ditch, drain or watercourse is located the sum of ten dollars (\$10), to be recovered in any court of competent jurisdiction in the county, and shall moreover be liable for all damages that may accrue to any person or persons by such an act or acts.

History: L. 1879, ch. 100, § 6; R.S. 1923, 24-206; L. 1973, ch. 134, § 28; July 1, 1974.

66-227. Railroad Crossings.

It is hereby made the duty of every person or corporation owning or operating any railroad crossed by a public highway, county highway or township road to make, and keep in good repair, good and sufficient crossings for such highway, road or street over their tracks, including all the grading, bridges, ditches and culverts within their right-of-way that may be necessary to make a safe crossing. The vertical profile or alignment of the centerline of the highway, road or street through the crossing shall comply with the American association of state highway and transportation officials (AASHTO) design manual titled, "a policy on geometric design of highways and streets" as published and in effect on January 1, 2001.

When the highway crossing the track is improved by the construction of a hard-surfaced road, the railroad company shall pave the space between the rails and for a distance of two feet on each side thereof with a pavement of the same or a better type for the full width of the pavement on the highway. On other crossings where the highway has not been improved, the planking or other material used between and for a distance of one foot outside of the rails shall be of a length to equal the roadway width measured perpendicular to the axis of the highway. Nothing in this act shall be construed to repeal any provision of law relating to railroad crossings on streets in cities of the first and second class.

History: L. 1915, ch. 280, § 1; L. 1919, ch. 242, § 1; R.S. 1923, 66-227. L. 2001, ch. 15, § 1; July 1.

66-228. Same; penalty; time within which to restore crossing.

Every person or corporation failing to comply with the provisions of this act shall be deemed guilty of a misdemeanor and shall be fined not less than five dollars, nor more than fifty dollars, for each and every violation hereof and each day same shall be allowed to remain out of repair shall be a separate offense: *Provided, however,* When any such crossings have been properly constructed as provided in this act, and shall become

defective because of accident or unusual severe or stormy weather, the person or corporation whose duty it is to maintain the same, shall have ten days in which to restore said crossing to its proper condition before the penalty herein provided for shall attach.

History: L. 1915, ch. 280, § 2; Dec. 1; R.S. 1923, 66-228.

66-229. Same; duty of officers.

Upon complaint, it is hereby made the duty of every county engineer and road supervisor in this state to see that this act is complied with in such person's jurisdiction and to report to the county attorney of such person's county every failure on the part of any person or corporation to comply with this act. It is hereby made the duty of the county attorney of each county in the state to enforce this act.

History: L. 1915, ch. 280, § 3; L. 1919, ch. 242, § 2; R.S. 1923, 66-229. L. 2001, ch. 15, § 2; July 1.

66-2,121. Railroad-highway crossing signs; specifications.

Every railway corporation shall cause railroad-highway crossing signs in the form of a crossbuck to be erected, well supported by posts or otherwise, alone or in combination with other protective devices, and constantly maintained on the right-hand side of the traveled public road or street, on each approach to the crossing when the same is crossed by the railway on the same level. Said railroad-highway crossing signs shall be elevated so that they may be easily seen by travelers. Each side of a railroad-highway sign shall be a white reflectorized background, with the words "RAILROAD CROSSING" in black lettering. When crossbuck signs are a part of a flashing light signal assembly, such signs and assemblies shall conform to the manual and specifications adopted by the secretary of transportation pursuant to K.S.A. 8-2003. If any such crossing consists of two or more tracks, including sidings, the number of tracks shall be indicated on an auxiliary sign of inverted T-shape, mounted below the railroad-highway crossing sign. Said auxiliary sign shall be of white reflectorized background, with black lettering. This section shall not apply to streets in cities, unless the railway corporation shall be required to put up such railroad-highway crossing signs by the governing body of such city, or the officer thereof having charge of such streets.

History: G.S. 1868, ch. 23, § 61; R.S. 1923, 66-2,121; L. 1975, ch. 343, § 1; L. 1980, ch. 203, § 1; April 4.

KSA CHAPTER 68.--ROADS AND BRIDGES

Selected Statutes

68-115. Opening and repair of roads by county engineer or township trustee; drains and ditches; penalty for obstruction; compensation for road building material taken; appeal.

(a) Except as provided by subsection (b), it shall be the duty of each and every county engineer to open or cause to be opened all state and county roads and of each and every township trustee to open or cause to be opened all mail routes and township roads which

have been or may hereafter be laid out or established through any part of the respective county or township. Notice of such action shall be given to the owner or owners, or their agent or agents, if residing in the county, or, if such owner is incapacitated, to the guardian of such person, if a resident of the county, through whose enclosed or cultivated lands such road is laid out or established. Such notice shall direct such property owners to open such road through their lands within 90 days after service of such notice. If the person or persons so notified do not open such road within the time stated in such notice, it shall be lawful and it is hereby made the duty of such county engineer on state and county roads and of such trustee on township roads and mail route roads to respectively enter upon such property and open such roads. If such notice is given between the March 1, and October 1, the notice shall designate the next following January 1, as the time of opening such road. And the county engineer or township trustee respectively shall keep the same in repair, and remove or cause to be removed all obstructions that may be found therein. The township trustee and the county engineer are hereby authorized to enter upon any land near or adjoining such public road, to dig and carry away any gravel, sand, stone, clay, gypsum or any other road-building material and to purchase any timber which may be necessary to improve or repair the road, and to enter upon any land adjoining or lying near such road, to make such drains or ditches through the same as the county engineer or township trustee deems necessary for the benefit of the roads, doing as little damage to the lands as the nature of the case and the public good will permit. The drains and ditches thus made shall be kept open if necessary by the township trustee or county engineer and shall not be obstructed by the owner or occupants of the land or by any other person, under the penalty of being fined not exceeding \$10 for each offense.

The owner of any gravel, sand, stone, clay, gypsum or any other road-building material taken, or the owner of the land through which ditches or drains may be made, as herein provided, or the owner of the crops thereon, shall be allowed a fair and reasonable compensation for the material so taken or for any injuries the lands or crops may sustain in consequence of the making of such drains or ditches. The amount of such compensation shall be determined, allowed and paid by the highway commissioners in event such material is used upon a mail route or a township road, and determined, allowed and paid by the board of county commissioners of the county when such material is used upon a county or state road. Such claims shall be allowed and paid in the same manner as other ordinary claims against the county or township and the claimant shall have the same right of appeal as is now provided by law in other cases.

(b) If the owner of any property adjacent to or abutting a township road which has been laid out but not opened prior to the effective date of this act desires to have such road opened, it shall be the duty of such owner to open such road. Such property owner shall establish a maintainable road bed and drainage in accordance with the standards established by the township board pursuant to K.S.A. 68-115a. Thereafter, it shall be the duty of the township board to maintain such road as required by subsection (a).

If the owner of any property adjacent to or abutting a township road which has been opened prior to the effective date of this act, but such road has not been maintained by the township for at least 20 years or has not been regularly used by the general public and the owner desires to have the road maintained for general public use, it shall be the duty of such owner to establish a maintainable road bed and drainage in accordance with the standards established by the township board pursuant to K.S.A. 68-115a. Thereafter, it

shall be the duty of the township board to maintain such road as required by subsection (a).

If there is a dispute between landowners regarding the location of a township road, the county engineer shall determine the location of the road.

History: L. 1911, ch. 248, § 11; R.S. 1923, 68-115; L. 1995, ch. 232, § 1; L. 1997, ch. 153, § 2; July 1.

68-118. Informational signs at intersections on township roads.

Each township trustee within his township is authorized to cause to be erected and kept up at the expense of the township, informational signs at the intersection of any roads under his supervision, containing an inscription in legible letters, directing the way and naming the distance to such cities as are situated on said road.

History: R.S. 1923, 68-118; L. 1961, ch. 299, § 7; June 30.

68-124. Private roads as public highways, maintenance.

Where under the laws of the state of Kansas, now in existence, or that may hereafter be enacted, 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 township board of the township in which such road is located to repair, place and keep in condition for travel such roads or highway. If such township board 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.

History: L. 1919, ch. 250, § 1; R.S. 1923, 68-124; L. 2003, ch. 115, § 1; July 1.

68-126. Fences across public highways; gates; county commissioners' powers and duties.

The county commissioners of any county are hereby empowered, where lands are used largely as pasture lands and wherever in their judgment the convenience of the traveling public will not be materially affected thereby, to authorize and permit the construction and maintenance of fences across public highways under their jurisdiction. Wherever such fences are permitted the board of county commissioners shall require and it shall be the duty of the person constructing or maintaining such fences to construct and maintain therein sufficient gates to accommodate travel, which gates shall be either swinging on hinges or gates that may be opened by the driver of a vehicle without alighting therefrom, or the ordinary wire gate, as the county commissioners may require. The board may also require the owner or other person constructing or maintaining such fence to construct upon such road an auto gate sufficient to enable automobiles to pass over or through such fence upon such road without stopping, and sufficient also to prevent stock passing through said fence.

All orders allowing the construction of such fences and requiring the gates herein provided shall be entered upon the journal of the board of county commissioners. The said board may, in its discretion, order and direct that any gates shall remain open during certain portions of the year, the time to be fixed by said board, or in its discretion and where there is a reasonable necessity therefor and the convenience of the traveling public

would not be materially affected thereby, it may order such gate or gates to be kept closed during the entire year.

History: L. 1911, ch. 248, § 38; L. 1915, ch. 289, § 1; L. 1919, ch. 248, §1; R.S. 1923, 68-126; L. 1961, ch. 299, § 9; June 30.

68-141a. Renting or hiring of machinery and equipment prohibited; exceptions.

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.

History: L. 1933, ch. 235, § 1; L. 1933, ch. 91, § 1 (Special Session); L. 1977, ch. 228, § 1; July 1.

68-141b. Supervision by experienced operator; times for renting; charges. 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.

History: L. 1933, ch. 235, § 2; June 5.

68-141f. Setting aside portions of road and bridge or street funds; definitions.

As used in this act, the following terms shall have the meaning ascribed to them by this section unless the context otherwise requires.

(1) "Municipality" means any city or county and any township which is not located in a county operating under the county road unit system.

(2) "Governing body" as applied to a county, means the board of county commissioners; as applied to a township means the township trustee, the township treasurer and the township clerk acting as a board; and as applied to a city means the governing body of such city regardless of the form of government of such city.

History: L. 1941, ch. 316, § 1; April 12.

68-141g. Same; resolution of governing body; procedure; retransfer, when. The governing body of any municipality by resolution is hereby authorized and empowered to transfer, annually, from the road, bridge or street fund of such municipality not to exceed twenty-five percent (25%) of the amount of money credited to any such fund, and subject to legal expenditure, in such year to a special road, bridge or street building machinery, equipment and bridge building fund.

Upon the adoption of such resolution, a copy thereof shall be delivered to the treasurer of such municipality and he shall credit the amount provided in such resolution to such special fund and shall debit the road, bridge or street fund as the case may be. All moneys credited to such special fund shall be used by such municipalities for the purpose of purchasing road, bridge or street building machinery or equipment or the building of bridges and such fund shall not be subject to the provisions of K.S.A. 79-2925 to 79-2937 or acts amendatory thereof or supplemental thereto, except that in making the budgets of such municipalities the amounts credited to, and the amount on hand in, such special fund and the amount expended therefrom shall be shown thereon for the information of the taxpayers of such municipalities.

If the governing body of any municipality shall determine that money which has been transferred to such special fund or any part thereof is not needed for the purposes for which so transferred, said governing body is hereby authorized and empowered by resolution to retransfer such amount not needed to the road, bridge or street fund of such municipality and such retransfer and expenditure thereof shall be subject to the provisions of K.S.A. 79-2925 to 79-2937 or acts amendatory thereof or supplemental thereto.

History: L. 1941, ch. 316, § 2; L. 1951, ch. 375, § 1; June 30.

68-169. Joint agreements between secretary of transportation and local units and between local units.

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, reconstructing, maintaining, acquiring of right-of-way or establishing the 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. This section shall not be construed as amending or repealing any existing law relating to the same subject but shall be construed as supplementary thereto.

History: L. 1957, ch. 357, § 5; L. 1965, ch. 393, § 1; L. 1975, ch. 349, § 1; L. 1975, ch. 427, § 76; L. 1980, ch. 204, § 1; April 3.

68-184. Sprinkling irrigation water on highways declared a public nuisance; injunction.

(a) No person shall allow the sprinkling of water from any irrigation watering system upon any state, county or township road or highway within this state.

(b) Any sprinkling of water on roads or highways, as provided in subsection (a), is hereby declared to be a public nuisance, and it shall be the duty of the county attorney or

district attorney of each county of this state, upon receiving notice of such nuisance from any person, to initiate injunctive remedies, if necessary, to prevent the occurrence of any such public nuisance.

(c) Prior to seeking injunctive relief, as hereinbefore provided, the county attorney or district attorney of any county in which there exists such public nuisance shall notify or cause to be notified, the owner, occupant or person in charge of land on which the irrigation system causing a public nuisance is located that such person is maintaining a nuisance and that injunctive relief will be sought if such nuisance is not otherwise abated.

History: L. 1976, ch. 222, § 1; July 1.

68-501. County engineer, appointment, qualifications, approval; termination of appointment, when.

The board of county commissioners of each county shall appoint a licensed professional engineer, whose official title shall be county engineer. Such appointment may be terminated without cause on June 1 of any year by a majority vote of the board of county commissioners or may be terminated for cause at any time by the board of county commissioners or by order of the secretary of transportation for incompetency or by dissolution of a county engineer district: *Provided*, That all appointments of county engineers shall be approved by the secretary of transportation. The provisions of this section shall not disqualify any county engineer who is not a licensed professional engineer and who was holding office as county engineer on June 30, 1961, and any such person shall be eligible for appointment as a county engineer.

History: L. 1917, ch. 264, § 8; L. 1919, ch. 245, § 2; R.S. 1923, 68-501; L. 1961, ch. 299, § 11; L. 1975, ch. 427, § 114; Aug. 15.

68-502. Duties of county engineer.

It shall be the duty of the county engineer, in conformity with the regulations and requirements of the secretary of transportation to:

- (1) Prepare plans and specifications and estimates for roads, bridges and culverts to be built by the county;
- (2) act for the county in all matters relating to the supervision of the construction, repairing, surfacing, resurfacing and maintenance of any roads, bridges or culverts, or anything pertaining to rivers, streams or watercourses, for which the county pays any part of the cost thereof;
- (3) visit and inspect the highways and culverts in each township of the county or district which have been reported as unsafe or in need of repair, and advise and direct the township board and the road overseer of each township as to the best methods of construction, repair, maintenance and improvement of such highways and culverts;
- (4) prepare plans, specifications and general regulations governing the construction and maintenance of township roads and culverts, and upon request furnish copies of the same

to the township board and to the road overseer of the several townships of the county or district;

(5) keep a record of all contracts and of all purchases of material, machinery or apparatus to be used in road construction, in excess of \$10,000, approved by the county engineer in any township;

(6) study the soil conditions and collect information concerning the various deposits of gravel, stone, sand, clay and other road and bridge building materials, and to investigate and determine the most approved methods of using the same;

(7) make maps of the roads in the different townships of the county or district, and where there are no other records, or the records are incomplete, and when ordered by the county commissioners, the county engineer shall make maps of plats and file them in the offices of the county clerk and township clerk, which when passed upon and adopted by the board of county commissioners shall be the records of such roads where there are no other records, and shall be additional and supplemental records when the former records are incomplete or imperfect;

(8) answer inquiries and to hold at least one public meeting annually to advise with highway officials in road, bridge and culvert improvement, and to perform all other duties required by law.

History: L. 1917, ch. 264, § 9; R.S. 1923, 68-502; L. 1961, ch. 299, § 12; L. 1975, ch. 427, § 115; L. 1984, ch. 253, § 1; July 1.

68-506. Classification and designation of roads in Non-county unit road system counties; improvement and maintenance of certain streets and highways

(a) In any county which has not adopted the county unit road system, it shall be the duty of the board of county commissioners with the approval of the county engineer to classify and designate the roads and highways within such county within the following classes:

(1) "County major collector roads" which shall include all county roads and highways designated for inclusion in the major collector road system in accordance with K.S.A. 68-1701 to 68-1704, and amendments thereto;

(2) "county minor collector roads" which shall include all county roads and highways, not designated for inclusion in the major collector road system, which are other main traveled roads utilized primarily for the movement of traffic between different areas of the county;

(3) "township minor collector roads" which shall include all township roads and highways not designated for inclusion in the major collector road system, which are other main traveled roads utilized primarily for the movement of traffic between different areas of the county; and

(4) "township or local service roads" which shall include all township roads and highways not designated for inclusion in the major collector road system or as county or township minor collector roads or highways.

(b) The county engineer and the board of county commissioners may shift road or highway mileage from one county road or highway classification to another as continuing study indicates that such changes are needed by reason of changing traffic needs or for other reasons substantiated by engineering analysis, except that no road or highway mileage may be shifted to or from the major collector road system except as provided in article 17 of chapter 68 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 1917, ch. 264, § 15; L. 1921, ch. 219, § 1; R.S. 1923, 68-506; L. 1925, ch. 211, § 1; L. 1935, ch. 249, § 1; L. 1945, ch. 267, § 1; L. 1949, ch. 344, § 4; L. 1961, ch. 299, § 13; L. 1975, ch. 427, § 117; L. 1986, ch. 252, § 2; L. 1988, ch. 270, § 2; L. 2005, ch. 84, § 4; July 1.

68-506g. Designating certain roads located in and out of city as part of county system; improvement and maintenance of.

Whenever any county major collector road or county minor collector road is located partly within and partly without a city or connects any such road or highway with a city, by and with the consent of the governing body, the board of county commissioners is hereby given power and authority and required to designate such public road or highway as a part of the county road or highway system. Such road or highway shall be improved and maintained as other parts of the county road system, except that the governing body of such city may aid in the construction, maintenance and improvement of such road or highway as it would were the road or highway wholly within the corporate limits of the city and may improve any such city boundary line road or street in the manner provided by K.S.A. 12-693, and amendments thereto. When a road or highway is being, or has been improved by the county where state or federal aid has been extended in the improvement of such road or highway, and such road or highway terminates at the city limits, and where a road or highway has been or shall be constructed with federal aid, which such road or highway terminates at a state line, and the state line is the corporate limits of a city within this state, the secretary of transportation is hereby authorized and empowered to extend federal aid, and the board of county commissioners, on the application of the governing body of the city, shall declare such city through which a street or streets form a connection between such roads or highways, a benefit district, and shall extend state aid on that part of the road or highway lying within the city limits in the same way and in the same manner as they extend aid in the improvement of the road or highway outside of the city limits. The secretary of transportation is hereby authorized and empowered to cooperate and deal with the governing body of the city, board of county commissioners, or other interested parties that provide funds to take care of the local part of the costs of the improvement of the road or highway lying within the city limits, and such improvement shall be under the supervision and direction of the secretary as provided for in the improvement of other roads and highways of like nature in the county.

History: L. 2005, ch. 84, § 1; July 1.

68-508. Maps of county roads; filing by county engineer for correction and approval.

As soon as the county roads are so designated, the county engineer shall mark them upon some map which shows the public roads and section lines in the county, and for this purpose existing atlas maps may be used, provided the county roads selected are plainly marked thereon. The map shall be filed with the board of county commissioners of such county for correction and approval.

History: L. 1917, ch. 264, § 17; March 7; R.S. 1923, 68-508.

68-518c. Tax levies by townships in Non-county unit counties; limitation; petition for election.

(a) The township board of any township located in a county not operating under the county road unit system, is hereby authorized to make an annual tax levy of not to exceed five mills for road purposes which will be sufficient, when added to other revenues available for such purposes, to finance the adopted budget of expenditures for road purposes.

(b) The township board of any such township desiring to increase the authorized limit existing on the effective date of this act may adopt a resolution authorizing such levy and shall publish the same once each week for three consecutive weeks in a newspaper of general circulation in the township. If within 30 days after the date of the last publication of such resolution a petition, signed by electors of the township equal in number to not less than 10% of the qualified electors of the township who voted for the office of governor at the last general election for such office, is filed in the office of the county election officer no such increased levy shall be made without having been approved by a majority of the electors of the township voting at an election called and held thereon. All elections held under the provisions of this section shall be called and held in the manner prescribed by K.S.A. 10-120, and amendments thereto.

(c) Taxes imposed under this section shall be levied on all the taxable tangible property in the township outside of incorporated cities, and the moneys derived therefrom shall be used for the construction, reconstruction, improvement, repair and maintenance of township roads and culverts.

History: L. 1949, ch. 350, § 3; L. 1957, ch. 361, § 1; L. 1970, ch. 385, § 3; L. 1980, ch. 327, § 1; L. 1999, ch. 154, § 51; May 27.

68-523. Township board of highway commissioners.

The township trustee, clerk and treasurer of each municipal township in this state shall constitute the township board of highway commissioners for their respective townships. The township trustee shall be the chairman and the township clerk shall be the clerk of the township board of highway commissioners.

History: L. 1917, ch. 264, § 30; March 7; R.S. 1923, 68-523.

68-524. Same; meetings.

The township board of highway commissioners shall hold regular meetings on the last Monday of March, June, September and December, and special meetings, as the occasion may require, at the call of the chairman or any two of the commissioners: Provided, That no bills shall be allowed or any other official business transacted except at a regular meeting or a special meeting at which all of the commissioners have had notice and at which at least two are present.

History: L. 1917, ch. 264, § 31; March 7; R.S. 1923, 68-524.

68-525. Township board of highway commissioners; records and accounts; compensation.

The clerk of the township board shall keep an accurate record of all official acts, and a detailed record of the proceedings of the board, in a well-bound book, to be provided by the township for that purpose. The record shall be signed by the chairperson and the clerk and kept open for inspection at any reasonable time. The record and system of township accounting shall be uniform throughout the state. Each of the township highway commissioners shall receive compensation for the time actually and necessarily spent while performing duties as township highway commissioners. The amount of such compensation shall be determined by the township board as provided by K.S.A. 80-207, and amendments thereto. The board of township highway commissioners may employ one or more of the members of the board of township highway commissioners to perform work and labor on the township roads of such township and bridges thereon. The amount of compensation for such work shall be determined by the township board as provided by K.S.A. 80-207, and amendments thereto. **History:** L. 1917, ch. 264, § 32; L. 1919, ch. 251, § 1; R.S. 1923, 68-525; L. 1941, ch. 310, § 2; L. 1943, ch. 237, § 1; L. 1957, ch. 362, § 1; L. 1965, ch. 394, § 1; L. 1982, ch. 429, § 1; L. 1984, ch. 253, § 3; L. 1996, ch. 184, § 1; May 2.

68-526. Duties of township board; plans, materials and equipment; traffic-control devices and signs.

(a) In all counties not operating under the county road unit system the township board shall have the general charge and supervision of all township roads and township culverts in their respective townships. The board shall procure machinery, implements, tools, drain tile, stone, gravel and any other material or equipment required, for the construction or repair of such roads and culverts. All work shall be done in accordance with plans and specifications and the general regulations to be prepared and furnished by the county engineer.

(b) In townships located in Douglas, Johnson, Riley, Shawnee and Sedgwick counties, the township board shall place and maintain traffic-control devices and guidance, warning and regulatory signs on all township roads as provided by K.S.A. 8-2005, and amendments thereto.

History: L. 1917, ch. 264, § 33; R.S. 1923, 68-526; L. 1961, ch. 299, § 17; L. 1984, ch. 253, § 2; L. 2003, ch. 87, § 2; July 1.

68-527. Maintenance, improvement and inspection of roads on county or township lines.

Where any township or county road is located as by law provided, upon the dividing line between two townships or two counties, it shall be the duty of the township boards of highway commissioners, or the boards of county commissioners of the townships or counties between which such road may be located to maintain, repair or improve said road between the two townships or counties, and it shall be the duty of the township boards or boards of county commissioners to supervise and provide for the maintenance, repair and improving of such roads: Provided, That in case such road or roads do not, in the judgment of the two county boards having jurisdiction, have sufficient travel to make their upkeep sufficiently necessary to the public, the county commissioners of the two counties may, when both boards concur, cause such road or roads to be vacated according to law and closed under the same conditions as provided by statute for the closing of a road within the county: And provided further, That in case a road is located on the dividing line of two counties and is a county road, then it shall be the duty of the adjoining counties to repair, maintain and improve said road as above provided, but if the road be a township road, then it shall be the duty of the adjoining townships to repair, maintain and improve such road. **History:** L. 1917, ch. 264, § 34; R.S. 1923, 68-527; L. 1927, ch. 250, § 1; June 1.

68-527a. Settlement of disputes over maintenance, improvement or inspection of roads on county or township lines; district courts; appeal.

Whenever a dispute arises over the maintenance, improvement and/or inspection of roads located on county lines or township lines on designated county line roads as provided for in K.S.A. 68-507 and 68-527, district court of the county in which the road is located shall have jurisdiction to hear and settle the dispute. If the decision involves a designated county line road, the district court of any county which adjoins such county line road shall have jurisdiction of and it shall be its duty to hear and settle the dispute. If an action is filed in more than one district court, the last action filed shall be dismissed on motion. Appeals to the supreme court may be taken from the decision of the district court.

History: L. 1973, ch. 265, § 1; July 1.

68-529. Deflection of road on county, township or city line; division of cost.

Where a road is located on a county, township or city line, and by reason of any impediment, natural or otherwise, any portion of such road suffers a deflection from such line not exceeding forty rods parallel distance, then for the purpose of repairing, maintaining and improving such road it shall be treated the same as though it were actually on such county, township or city line, and all expenses either in money, material or labor necessary to repair, maintain and improve any portion of said road shall be borne

jointly by the counties, townships and cities contiguous thereto as provided in other like cases. **History:** L. 1917, ch. 264, § 36; R.S. 1923, 68-529; L. 1927, ch. 250, § 3; June 1.

68-530. Township road overseer; assistants; trustee as overseer in certain counties; repair and improvement work on township roads; limitation; compensation.

The township board, with the approval of the county engineer, shall appoint, on merits only, a competent experienced road builder for road overseer for the entire township. The township road overseer shall have charge of the construction and maintenance of all township roads, bridges and culverts, under the supervision of the township board and the county engineer. When in the opinion of the county engineer the conditions demand it, the overseer may appoint one or more competent assistants, subject to the approval of the township board. The township board may designate a member of the township board to act as road overseer. Compensation and the cost of benefits provided to such officer for such work and labor shall be determined by the township board as provided by K.S.A. 80-207, and amendments thereto.

History: L. 1917, ch. 264, § 37; R.S. 1923, 68-530; L. 1943, ch. 238, § 1; L. 1973, ch. 266, § 1; L. 1995, ch. 232, § 3; L. 1996, ch. 184, § 2; May 2

68-531. Same; compensation; bond; tenure.

The compensation of the road overseer and assistants shall be fixed by the township board at such rate as may be reasonable for the time actually employed in the performance of their duties. In townships where a township board member has been designated as road overseer under K.S.A. 68-530, and amendments thereto, and when such board member is paid by the day and not by contract, such board member shall be compensated in an amount determined by the board as provided by K.S.A. 80-207, and amendments thereto. Before entering upon such duties, the overseer shall give bond unto the township, with surety to be approved by the township board, in the sum of \$1,000, conditioned upon the faithful discharge of such duties and the protection, care and return of all property of the township which may come into the overseer's custody. The township overseer and any assistants, if any, shall hold office at the pleasure of the township board.

History: L. 1917, ch. 264, § 38; L. 1919, ch. 245, § 9; R.S. 1923, 68-531; L. 1943, ch. 238, § 2; L. 1957, ch. 362, § 2; L. 1996, ch. 184, § 3; May 2.

68-532. Letting township contracts.

The township board, in letting contracts and in employing labor for the construction or maintenance of township roads, shall follow the same proceedings and regulations as herein provided for county roads, so far as the same are applicable.

History: L. 1917, ch. 264, § 39; March 7; R.S. 1923, 68-532.

68-534. Dragging township roads; patrolman; compensation; penalties for unlawful acts.

The county engineer, with the approval of the township board of highway commissioners, shall determine what township roads shall be dragged, which shall include all graded rural mail route roads, and shall each year contract with or employ some person or persons to drag the graded roads in their respective townships at such times and upon such terms as the board and the county engineer shall direct. The said board shall have the power to bind the township to pay a reasonable compensation for dragging such roads: *Provided*, The width to be dragged, shall not be less than 16 feet.

The county engineer, with the approval of the board of county commissioners, shall determine what county roads shall be dragged, and shall arrange each year with some person or persons to drag the county roads within the county at such times and upon such terms as the board and the county engineer may direct.

The board shall pay a reasonable compensation for dragging such roads: *Provided*, That upon the recommendation of the county engineer, either the board of county commissioners or the township board of highway commissioners may contract with or employ some person or persons to act as patrolman and to drag and maintain any specified section of roads under their control and to make any slight repairs needed on any bridge or culvert thereon, and the said board of county commissioners and township board of highway commissioners are hereby authorized to pay any such patrolman a reasonable compensation for such maintenance work in addition to the agreed amount for dragging: *Provided*, That all labor performed upon the county roads for dragging, patrolling and maintaining shall be paid for out of the county road fund on vouchers approved by the county engineer; and all labor so performed on township roads out of the township road fund on vouchers approved by the road overseer: *And provided further*, That any person or persons employed, or who shall take a contract to drag, patrol or maintain any road, county or township, who shall make a false return of the number of miles dragged, or the time spent on other work, or the amount of work done by him, or at the time which such dragging or other work was done, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be fined in a sum not less than \$25, nor more than \$500: *And provided further*, That any officer under the authority of this section who shall neglect or refuse to enforce the provisions of this section as related to the dragging of roads or highways shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum of not less than \$10, and not more than \$250. **History:** L. 1917, ch. 264, § 41; March 7; R.S. 1923, 68-534

68-536. Township roads; use of tax moneys.

The township treasurer shall receive from the county treasurer the road tax in compliance with the provisions of this act, and the township board of highway commissioners shall appropriate the same for the construction, maintenance and drainage of township roads

and township bridges and culverts, and for overseeing and supervising the same within their respective townships outside the corporate limits of cities, and for the purchase of tools, machinery and equipment to be used on such roads.

History: L. 1917, ch. 264, § 43; R.S. 1923, 68-536; L. 1925, ch. 212, § 1;
March 23

68-538. Reports of township overseer.

Each township road overseer shall keep an accurate account of all labor and materials used by him in the construction, repair and maintenance of township roads and culverts on forms prescribed by the county engineer, and in such manner as will enable the township board to determine the actual cost of constructing, repairing and maintaining the roads and culverts under his jurisdiction. He shall make a careful, itemized, signed report of the same and present it to the township board on the first of each month following the month in which the bills were incurred.

History: L. 1917, ch. 264, § 45; L. 1919, ch. 245, § 10; R.S. 1923, 68-538; L. 1961, ch. 299, § 19; June 30.

68-539. Reports of the township clerk.

It shall be the duty of the township clerk to make a full itemized signed statement to the county engineer of the work accomplished and the amounts expended upon the township roads and culverts during each calendar year. Said report shall include all work done by the township, the amount of money spent and how expended, and all other information provided for on the annual report blank forms furnished by the secretary of transportation. Said report shall be submitted to the county engineer within fifteen (15) days after the close of each calendar year. All reports shall be made on the standard forms prescribed by the secretary.

History: L. 1917, ch. 264, § 46; L. 1919, ch. 245, § 11; R.S. 1923, 68-539; L. 1961, ch. 299, § 20; L. 1975, ch. 427, § 121; Aug. 15.

68-540. Reports by county engineers or road supervisors.

It shall be the duty of the county engineer or road supervisor to make a written report to the board of county commissioners of the work accomplished and funds expended upon all the roads and bridges for the current year, which shall close on the thirty-first day of December of each year. This report shall show which roads of the county and township systems have been completed or partially completed, and credit to such roads shall be shown upon the county road plan not later than April 15, and a copy of the report shall be immediately forwarded to the state transportation engineer upon standard printed forms.

History: L. 1917, ch. 264, § 47; L. 1919, ch. 245, § 12; R.S. 1923, 68-540; L. 1951, ch. 385, § 1; L. 1975, ch. 427, § 122; L. 1980, ch. 205, § 1; July 1.

68-541. Forms for accounts and reports.

All forms and blanks necessary to secure uniformity of records and reports in the system herein provided shall be prescribed by the secretary of transportation.

History: L. 1917, ch. 264, § 48; R.S. 1923, 68-541; L. 1975, ch. 427, § 123; Aug. 15.

68-542. Meetings of county and township road officials; compensation.

The county engineer shall call a one-day meeting of all of the county and township road officials in each county at least once each year, for the purpose of discussing any and all matters pertaining to the improvement of the highways, bridges and culverts of the county and of the several townships, and to devise means of systematizing and standardizing the work. County officials in attending such meetings shall each receive from the county the same compensation as specified by law for county work. Township officials shall be compensated in an amount determined by the township board as provided by K.S.A. 80-207, and amendments thereto.

History: L. 1917, ch. 264, § 49; R.S. 1923, 68-542; L. 1961, ch. 299, § 21; L. 1996, ch. 184, § 4; May 2.

68-543a. In counties not under county united road system; culverts over ditches in front of private property; costs; additional culverts or new entrances; procedures; penalty.

(a) In counties which have not adopted the county unit road system, whenever it is necessary to make a ditch along a public road in front of any property at such depth as will in the opinion of the officials in charge of such road obstruct access from such property with the public highway, it shall be the duty of the county engineer on county roads and the township board on township roads to cause to be constructed and maintained a substantial culvert over such ditch, so as to make a good, safe crossing. The county shall pay for such improvement on county roads and the township on township roads. The cost of such culvert shall be paid by the owner of such property when such property does not have a culvert and the installation of such culvert is requested by the property owner or such property owner's agent. All moneys for the payment of such materials shall be deposited in the county road and bridge fund in case of counties in the township road fund, in case of townships.

(b) Whenever any property owner shall request an additional culvert or new entrance on a county road, the culvert or new entrance may be installed by the county engineer and the cost charged to the property owner. The county engineer may require the property owner to deposit the estimated cost of such installation before installing and constructing the culvert or new entrance, or the property owner may install and construct such additional culvert or new entrance, but only after first obtaining approval of plans therefor and permission to do so from the county engineer. Any such work shall be done by the owner subject to the direction and supervision of the county engineer.

(c) Whenever any property owner shall request an additional culvert or new entrance on a township road, the culvert or new entrance may be installed by the township board and the cost charged to the property owner. The township board may require the property owner to deposit the estimated cost of such installation before installing and constructing the culvert or new entrance, or the property owner may install and construct such additional culvert or new entrance, but only after first obtaining approval of plans therefor and permission to do so from the township board. Any such work shall be done by the owner subject to the direction and supervision of the township board.

(d) It shall be a public offense for any property owner or other person to construct a culvert or entrance across any ditch along a public road without first having secured approval of the plans therefor and permission to do so from the county engineer for county roads or township board for township roads. Any person who shall violate the provisions of this section shall, upon conviction thereof, be fined not less than \$50 nor more than \$100.

History: L. 2004, ch. 38, § 1; July 1.

68-544. Tunnels under roads by landowners; approval; costs.

Any person owning land on both sides of the public road may at his own expense tunnel under such road from one side to the other, but he shall construct such tunnel so as not to endanger the public in the use of said road. Before constructing the said tunnel the landowner shall obtain from the officials in charge of such road and county engineer their approval of the place, the kind of tunnel, and the manner of constructing the same. The officials in charge of such road shall cause the necessary repairs to be made on said bridge or tunnel at the expense of the owner: *Provided*, That if a bridge or culvert is a necessary structure at the place where the owner desires such tunnel, the owner shall pay only the difference between the necessary cost of such structure and the cost of making it suitable for the passage of livestock under the roadway, such difference in cost to be ascertained and fixed by the county engineer. The actual cost of such repairs if not promptly paid by the owner of such land shall be certified by the county engineer to the county clerk, who shall enter the same upon the tax roll in a separate column as a tax charge against such land and the same shall be collected as other taxes are collected, and when collected shall be credited to the county road fund if a county road and to the proper township road fund if a township road.

History: L. 1917, ch. 264, § 51; March 7; R.S. 1923, 68-544.

68-545. Unlawful obstructions, excavations, removal of materials, dumping trash or other materials or plowing of roads; penalty; payment of cost to restore.

It shall be unlawful for any person or persons to obstruct any portion of a public highway, including any portion of the entire right-of-way, in any manner with intent to prevent the

free use thereof, or to make any holes therein, or to remove any earth, gravel or rock therefrom or any part thereof, or in any manner to obstruct any ditch on the side of any such highway and thereby damage the same, to dump trash, debris, sewage, or any other material, on any highway or any ditch on the side of any highway, or to plow any public highway for the purpose of scouring plows, or for any other purpose except for the improvement of such highway and as directed in writing by the county engineer and the township board of highway commissioners acting jointly. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction shall be fined for each and every offense under this act in the sum of not more than \$200, and shall pay costs of the action and the cost of cleaning the public highway and restoring it to its prior condition.

History: L. 1917, ch. 264, § 52; R.S. 1923, 68-545; L. 1951, ch. 386, § 1; L. 1961, ch. 305, § 1; L. 1984, ch. 254, § 1; July 1.

68-551. Mail route inspections; repair.

The board of county commissioners of every county shall cause to be inspected every county road upon which United States mail is carried and the highway commissioners of every township shall inspect, or cause to be inspected, every mail route within their township which is not located on a county road, after the occurrence of every storm, and as soon as possible after complaint is made, and shall at such times inspect the conditions of the culverts and bridges, and within a reasonable time repair the same, and remove from the highway all obstructions that may have been caused by the elements, and do everything reasonable to keep such mail routes clear and free for the distribution of the mail.

History: L. 1919, ch. 249, § 1; L. 1920, ch. 50, § 1; Feb. 6; R.S. 1923, 68-551.

68-560. Certain townships may turn over maintenance, repair and construction of roads to county; election; resolution; petition; abandonment.

(a) In any county not operating under the county road unit system, any township in such county, pursuant to a written agreement with the board of county commissioners, may turn over the maintenance, repair and construction of township roads to the county as provided by this subsection. Any such agreement shall specifically state the duration of such agreement. The question of turning over the maintenance, repair and construction of the township roads to the county shall be submitted to a vote of the qualified electors of the township at the general election whenever there shall have been submitted to the board of county commissioners at least 60 days prior to the date of such general election a petition signed by 10% of the qualified electors of such township or a resolution of the township board calling for such election.

(b) Any township which has adopted the provisions of this act may abandon the provisions of this act, and take over the maintenance, repair and construction of township roads, as provided by this subsection. The question of abandoning the adoption of the provisions of this act shall be submitted to a vote of the qualified electors of the township at any general election after the date such township has adopted the provisions of this act,

whenever there shall have been submitted to the board of county commissioners at least 60 days prior to the date of any such general election, a petition signed by at least 20% of the qualified electors of such township.

History: L. 1941, ch. 319, § 1; L. 1986, ch. 254, § 1; L. 1991, ch. 210, § 1; July 1.

68-561. Same; procedure upon adoption of act; tax levies; use of machinery.

Whenever any township has petitioned or voted to turn over the maintenance, repair and construction of the township roads to the county, as hereinbefore provided, the township board of such township is hereby authorized and directed to pay over to the board of county commissioners of such county any and all unused road money or funds or surplus funds and all other moneys received by such township for road purposes and in the hands of such township board and any road machinery or equipment owned by such township, to be used by the board of county commissioners for road work on the township roads in the township. The township board shall each year certify to the board of county commissioners, as is now prescribed by law, the aggregate amount to be raised by taxation for township road purposes within such township for the year next ensuing, and the board of county commissioners shall determine the rate of levy, and levy such rates as are now provided by law. Such taxes and all other moneys received by such township board for road purposes shall be placed by the county treasurer in a separate fund to be used by the county commissioners only for road work and improvement on township roads within the township: *Provided*, That the county shall not be obligated to spend on the roads and highways of such townships more money than is credited to said separate fund.

No rental charge shall be made by the county for the use of any machinery used on township roads in any such township except such rental as shall be mutually agreed upon by the said township board and board of county commissioners.

History: L. 1941, ch. 319, § 2; June 30.

68-572. Intergovernmental agreements for road construction and maintenance; county, city and township.

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. Such agreements also may provide methods of mutual assistance and cooperation whereby the machinery, equipment and employees of the county and township may be used for grading or bringing to grade township roads by the county or by the county and township and the completion and maintenance thereof by the township. Such agreements also may provide for the improvement and maintenance of city boundary line roads or streets in accordance with the provisions of K.S.A. 12-693, and amendments thereto. Any such agreement between a county and a township may require the county engineer, and it is hereby made the county engineer's duty in conformity

therewith, to make all necessary surveys for the laying out or bringing to grade any of such township roads.

History: L. 1945, ch. 274, § 1; L. 1967, ch. 354, § 1; L. 1988, ch. 270, § 3; July 1

68-5,102. Declaration of minimum maintenance roads; procedure; posting of road; limitation of tort liability.

(a) When the board of county commissioners of any county is of the opinion that any road within the county or on the county line is used only occasionally or is used only by a few individuals, the board may commence proceedings to declare the road a “minimum-maintenance road.” Roads which have been constructed with federal aid shall not be minimum-maintenance roads.

(b) When a determination is to be made that one or more roads or parts of roads may be declared minimum-maintenance roads, the board shall adopt a resolution describing such roads and shall transmit copies thereof to the planning commission of the county for its recommendation.

(c) When a resolution is adopted under subsection (b) the board of county commissioners shall cause it to be published once in the official county paper together with a statement that a hearing will be held on such determination with the time and place of such hearing specified. Any person wishing to appear at such hearing and give evidence or testimony thereon may do so. At the conclusion of such hearing the board shall determine what roads or parts of roads described in such resolution are to be declared by it minimum-maintenance roads.

(d) Not later than 10 days after any road is declared to be a minimum-maintenance road, signs shall be posted thereon by the board of county commissioners stating "Minimum-maintenance, travel at your own risk." Such signs shall display black letters on a yellow background with the letters being at least two inches high.

(e) When any road described in (b) is on, or partly on, a county line, a copy of such resolution shall be transmitted to the board of county commissioners of the adjoining county in which a part of such road is located. Also, a copy shall be transmitted to the planning commission of such adjoining county and any regional or metropolitan planning commission in which both of such counties are located. The board of county commissioners of such adjoining county, its planning commission and any regional or metropolitan planning commission in which both counties are located may make recommendation to the board of county commissioners adopting such resolution. Adoption of a resolution under (b) shall not limit the right of the board of county commissioners of any adjoining county from proceeding under this act. The action of either of such boards of county commissioners shall apply only to that portion of such road which is in the county of the board adopting a resolution under (b).

(f) Whenever a road has been declared a minimum-maintenance road in accordance with this section and signs have been posted thereon as provided in (d), the state, the county and the townships within such county and employees of such governmental entities shall

be exempt from liability for any claim by any person under the Kansas tort claims act with respect to such minimum-maintenance roads. No such governmental entity or employee thereof shall be liable for damages arising from such roads or their maintenance or condition.

History: L. 1981, ch. 358, § 1; July 1.

68-1101. Definitions; concrete overflow bridge or ford as bridge.

Unless the context clearly indicates otherwise the following words shall have the meanings herein ascribed to them wherever they appear in chapter 68 of the Kansas Statutes Annotated, and acts amendatory thereof or supplemental thereto:

(1) The word "bridge" shall mean a structure having a clear span of more than twenty (20) feet, measured along the center line of the road between the inside faces of end supports, and multiple-span structures where the sum of the individual clear spans plus the aggregate width of the intermediate support or supports is in excess of twenty (20) feet;

(2) the word "culvert" shall mean any waterway structure not defined as a bridge;

(3) the word "subway" shall mean a clear opening for public highway travel under a bridge or trestlework;

(4) the word "structure" shall mean either a bridge, a culvert or a subway.

For the purposes of this chapter, a concrete overflow bridge or ford forty (40) feet or more in length shall be considered a bridge, and may be constructed and maintained in accordance with the laws relating to the construction and maintenance of bridges; and any concrete overflow bridge or ford less than forty (40) feet in length shall be considered a culvert and may be constructed and maintained in the manner provided by law for the construction and maintenance of culverts.

History: L. 1917, ch. 80, § 1; L. 1919, ch. 97, § 1; R.S. 1923, 68-1101; L. 1961, ch. 299, § 23; June 30.

68-1104. Construction and maintenance of bridges and culverts on county and township roads; payment of cost.

The board of county commissioners shall construct, reconstruct, repair and maintain all county bridges and county culverts located on county roads and township roads and the cost of such work shall be paid from the bridge fund of the county. All township culverts shall be constructed, reconstructed, repaired and maintained by the township board of highway commissioners and the cost of such work shall be paid from the road fund of the township. Except as hereinafter provided, all approaches to culverts and bridges on township roads shall be constructed, reconstructed, and maintained by the township board of highway commissioners and the cost of such work shall be paid from the road fund of the township, except that where the payment of the costs of constructing such approaches has been authorized by a majority vote of the electors of the county in which such township is located prior to the effective date of this act, said cost of construction shall be paid from the county's bridge fund, within the limit of moneys authorized by such election. The board of county commissioners may elect to pay, from the bridge fund of the county, for the construction, reconstruction or maintenance of any approach to a culvert or bridge on a township road, in which event the township board of highway commissioners shall not be responsible therefor.

History: L. 1917, ch. 80, § 4; L. 1919, ch. 98, § 3; L. 1921, ch. 85, § 1; L. 1923, ch. 75, § 2; R.S. 1923, 68-1104; L. 1927, ch. 254, § 1; L. 1970, ch. 274, § 1; L. 1978, ch. 274, § 1; July 1

68-1107. Classification of bridges and culverts.

Bridges and culverts located on public roads or highways of this state shall be classified as follows:

(a) All bridges located on county or township roads shall be known as "county bridges";

(b) all culverts located on county roads or within the right of way lines of a county road shall be known as "county culverts";

(c) all culverts located on township roads with a required opening of twenty-five (25) square feet or more, as determined by the county engineer, shall be known as "county culverts";

(d) all culverts located on township roads having a required opening of less than twenty-five (25) square feet, as determined by the county engineer, shall be known as "township culverts."

History: L. 1917, ch. 80, § 7; L. 1923, ch. 75, § 1; R.S. 1923, 68-1107; L. 1961, ch. 299, § 24; June 30.

68-1109. Roadway and grade of bridges and culverts on county and township roads and on highways over railroad tracks.

(a) Except as otherwise provided, all bridges constructed on county major collector roads or highways and on county minor collector roads or highways shall have a clear roadway of not less than 24 feet. Except as otherwise provided, bridges constructed on township and local service roads and highways shall have a clear roadway of not less than 20 feet. A bridge over 100 feet in length constructed on a county major collector road or highway or on a county minor collector road or highway may have a clear roadway of less than 24 feet, if approved by the county engineer, and a bridge over 100 feet in length constructed on a township or local service road or highway may have a clear roadway of less than 20 feet when approved by the county engineer.

(b) All culverts constructed on county major collector roads or highways or on county minor collector roads or highways shall have a clear roadway of not less than 24 feet. The roadway of any bridge constructed on any public road or highway over the tracks of any railroad shall not be less than 24 feet wide for any county major collector road or highway or county minor collector road or highway and not less than 20 feet wide for any township or local service road or highway.

History: L. 1917, ch. 80, § 9; R.S. 1923, 68-1109; L. 1961, ch. 299, § 25; L. 1975, ch. 427, § 143; L. 1986, ch. 252, § 5; L. 2005, ch. 84, § 9; July 1.

AG Opinion 2004-18 Township Board Compensation

June 29, 2004

Re: Roads and Bridges--County and Township Roads--Township Board of Highway Commissioners; Compensation

Synopsis: Township board members can be compensated for providing services to the township provided the services fall within the parameters of "township business" or are identified specifically in the statutes. However, while a township board may be authorized to appoint or employ one of its members to perform services for the township, its members must comply with all state governmental ethics laws. Cited herein: [K.S.A. 68-525](#); K.S.A. 2003 Supp. 68- 526; [K.S.A. 68-530](#); 75-4301a, 75-4304; 75-4305; 80-202; 80-207; K.S.A. 2003 Supp. 80-208; [K.S.A. 80-301](#); 80-302; 80-304; 80-401; 80-406; K.S.A. 2003 Supp. 80-410; [K.S.A. 80-501](#); 80-1201; 80-1407; K.S.A. 2003 Supp. 80-1544; [K.S.A. 80-2002](#).

Jan Satterfield
Butler County Attorney
201 W. Pine, Suite 104
El Dorado, Kansas 67042

Dear Ms. Satterfield:

You inquire whether township board members can receive compensation for services provided to the township. Specifically, you indicate that there are concerns about members providing mowing and general labor services on township roads and other township property. While former Attorney General Carla J. Stovall opined on this subject in 1995, [\[FN1\]](#) the laws mentioned in that opinion have since been amended, and, therefore, its value is limited. We also note that the propriety of a township board or board member's action will depend upon the specific facts of each situation, and, therefore, we offer this opinion only for general guidance.

The governing body of a township is comprised of a township trustee, clerk, and treasurer. [\[FN2\]](#) These officers are entitled to "receive compensation for their services while actually and necessarily conducting township business." [\[FN3\]](#) In the absence of a statutory definition of "township business," or an appellate court decision limiting its scope, the governing body has discretion in determining the parameters of "township business" for which its members will be compensated. Presumably, "township business" would include the statutory duties of a township board and its individual members. [\[FN4\]](#) [K.S.A. 80-207](#) establishes the procedure for compensating township board members where the total amount of annual compensation per member exceeds \$100:

"(c) The township board, by adoption of a resolution, may fix the amount of compensation to be received by members of the board. Such resolution shall be published at least once each week for two consecutive weeks in a newspaper of general circulation within the township. If the total amount of compensation to be received annually by each member of the board is \$100 or less, such resolution shall not be required to be published and shall be effective upon adoption of the resolution. A resolution providing for an increase in compensation shall not be effective until 30 days following the date of the last publication of the resolution." [\[FN5\]](#)

In addition to board members being compensated for "township business," there are a variety of statutes that authorize board members to perform specific compensated services for the

township. The following is a brief list:

1. A township board, serving as a board of highway commissioners, [\[FN6\]](#) "may employ one or more... [board] members to perform work and labor on the township roads... and bridges." [\[FN7\]](#)
2. A township board may appoint one of its members to serve as the road overseer who is responsible for the "construction and maintenance of all township roads, bridges, and culverts, under the supervision of the township board and the county engineer." [\[FN8\]](#)
3. A township board serves as an auditing board, which examines and audits all claims against the township for which the member can receive compensation for "attending to the township business." [\[FN9\]](#)
4. Township board members can receive compensation for their services "in the supervision of the operation" of the township water system, [\[FN10\]](#) as members of the governing body of a township fire district, [\[FN11\]](#) and for services as members of the governing body of a township sewage district. [\[FN12\]](#)

Clearly, township board members can be compensated for providing services to the township provided the services fall within the parameters of "township business" or are identified in the statutes. We also note that state law contemplates the employment of township officers by virtue of K.S.A. 2003 Supp. 80-208 which provides, as follows:

"A township officer who also is an employee of the township shall abstain from voting for or participating in any motion of the township board to increase the compensation, salary, or benefits to be paid to such person as an employee of the township." [\[FN13\]](#)

However, while a township board may be authorized to appoint or employ one of its members to perform services for the township, [\[FN14\]](#) its members must comply with all state governmental ethics laws, including [K.S.A. 75-4304](#) and [75-4305](#). [K.S.A. 75-4304](#) prohibits a local governmental officer or employee from making or participating in a contract in which the officer or employee has a "substantial interest." [\[FN15\]](#) [K.S.A. 75-4305](#) requires a local governmental officer or employee to file a statement of substantial interests with the county election officer before "acting upon any matter which will affect any business in which the officer or employee has a substantial interest." [\[FN16\]](#) Therefore, depending upon the facts, the member being considered for appointment or employment should avoid participating, as a board member, in the making of any contract for that purpose, and abstain from taking any action in regard to the matter. [\[FN17\]](#)

You also query whether a board member can take "unilateral action" to perform a compensated service. This issue was addressed in Attorney General Opinion No. 81-141, which concluded that where a statute requires action by a township board, such action can be taken only by the board - not individual members. [\[FN18\]](#) Moreover, to the extent there is conflicting statutory language dealing with duties delegated to a township officer and also to the township board, the more recent statute controls. [\[FN19\]](#) The better practice may be for the township board to take formal action appointing the individual to perform the service and establishing the compensation. [\[FN20\]](#)

Finally, you inquire regarding the legal propriety of a township board member hiring a relative to perform compensated services for the township. There are no statutes prohibiting nepotism in this instance. As indicated previously, however, the better practice may be for the township board to appoint or employ individuals to perform services for the township.

Additionally, the governmental ethics laws should be consulted in determining whether a township board member is precluded from participating in a contract, as a board member, or acting on any matter involving the board member or the board member's relatives.

Sincerely,

Phill Kline
Attorney General of Kansas

Mary Feighny
Assistant Attorney General

[FN1]. Attorney General Opinion No. 95-113.

[FN2]. [K.S.A. 80-202](#).

[FN3]. [K.S.A. 80-207](#).

[FN4]. [K.S.A. 80-301](#) (duties of township trustee include providing for "the care and management of all property, real and personal"); [K.S.A. 80-401](#) (duties of township treasurer); [K.S.A. 80-501](#) (duties of township clerk). See K.S.A. 2003 Supp. 68-526 ("[i]n all counties not operating under the county road unit system the township board shall have the general charge and supervision of all township roads and township culverts in their respective townships); [K.S.A. 80-1201](#) ("[t]he township board... is hereby authorized to purchase material and employ one or more suitable persons to destroy prairie dogs, moles, and gophers...").

[FN5]. Emphasis added.

[FN6]. [K.S.A. 68-525](#).

[FN7]. Id.

[FN8]. [K.S.A. 68-530](#).

[FN9]. [K.S.A. 80-302](#).

[FN10]. [K.S.A. 80-1407](#).

[FN11]. [K.S.A. 80-1544](#).

[FN12]. [K.S.A. 80-2002](#).

[FN13]. Emphasis added. The common law doctrine of incompatibility of office, which precludes a member of a governing body from being employed by that body when the positions are "incompatible," does not apply when the doctrine is abrogated by statute. Attorney General Opinion No. 98-46.

[FN14]. [K.S.A. 68-525](#); 68-530.

[FN15]. [K.S.A. 75-4301a](#).

[FN16]. Questions regarding the interpretation of the governmental ethics statutes as they relate to specific situations should be referred to the Governmental Ethics Commission. See K.S.A. 2003 Supp. 75-4303a.

[FN17]. [K.S.A. 75-4304](#) and [75-4305](#).

[FN18]. See Attorney General Opinion No. 86-47.

[FN19]. Attorney General Opinion No. 81-141.

[FN20]. Attorney General Opinion No. 81-141. This practice would facilitate the filing of statutory reports required of the trustee and the treasurer. [E.g. [K.S.A. 80-304](#) ("[t]he township trustee... shall make a complete report of the affairs of the township... [to the county commission] stating in detail the items of account audited and allowed, the nature of each account, and the name of each person to whom such an account was allowed. Such report shall specify the amount of compensation... paid to members of the township board"); [K.S.A. 80-406](#) ("[t]he township trustee shall make a verified statement of all bills allowed by the township board for each year... stating particularly the person or persons to whom and the objects for which such bills were drawn... "); [K.S.A. 80-410\(c\)](#) ("[t]he treasurer of the township shall file with

the county clerk a full and detailed statement of the amount of money paid to each member of the township board... during the preceding calendar year...").

BOCC of Marshall County v. Lincoln Township-County authority to repair township roads

266 Kan. 355, 970 P.2d 54

Supreme Court of Kansas.
BOARD OF COUNTY COMMISSIONERS OF MARSHALL COUNTY, Kansas, Appellee,
v.
LINCOLN TOWNSHIP, MARSHALL COUNTY, Kansas, Appellant.
No. 80215.
Dec. 11, 1998.

County brought action against township to recover costs it expended to repair township road which was determined to be unsafe for public travel. The District Court, Marshall County, J.D. Euler, J., entered summary judgment in favor of county, awarding it \$2,030.25. Township appealed. The Supreme Court, [Lockett, J.](#), held that: (1) county had discretion to order necessary repairs when township failed to maintain its roads in good condition for travel when weather was wet or road was muddy and was entitled to reimbursement for required repairs, and (2) township's failure to budget sufficient funds to meet cost of road repair did not prohibit county from ordering repairs. Affirmed.

[Abbott, J.](#), filed a dissenting opinion, in which [McFarland, C.J.](#), and [Davis, J.](#), joined.

Repair of roads which are not safe for travel is a duty imposed by the State on townships for the purpose of "public safety," within meaning of extreme emergency need exception to prohibition against issuing no-fund warrants for purposes of Cash Basis Law. [K.S.A. 10-1101](#) et seq., [79-5030](#), [79-5031](#).

Syllabus by the Court

1. Rules of summary judgment are discussed and applied.
2. When a statute is plain and unambiguous, the court must give effect to the intention of the legislature as expressed.
3. Under [K.S.A. 68-124](#), the duty of a township is to keep its roads in "good condition for travel." Where the township neglects, refuses, or fails to comply with the statute's mandate, the board of county commissioners of the county in which the township is located may exercise its discretion to conduct road repairs and charge the township for the project.
4. Where a public official or board is vested with discretion, courts will not interfere to control that discretion in the absence of fraud, bad faith, or gross impropriety on the part of the official or board.
5. The fact that a township has failed to budget sufficient funds to meet the cost of road repair does not prohibit the board of county commissioners of the county in which the township is located from ordering township road repair or maintenance when the board finds the township road is not in good condition for travel. [K.S.A. 68-124](#).
[Edward F. Wieggers](#), of Galloway, Wieggers & Heeney, LLP, of Marysville, argued the cause and was on the brief for appellant.

[Keith W. Sprouse](#), county counselor, argued the cause and was on the brief for appellee.

[LOCKETT, J.:](#)

County repaired a township road. Township refused to pay County. County filed suit against Township to recover its costs for the road repair. The district court found County had statutory authority to repair the road and assess the cost against Township, granted summary judgment to County, and entered judgment against Township for the amount of the repairs. Township appeals, claiming Board of County Commissioners had no statutory authority to repair or order Township to repair the township road.

On October 10, 1994, seven residents of Lincoln Township, who resided along or near a township road that lies between Lincoln Township and Nemaha County, met with the Board of County Commissioners of Marshall County (Marshall County) to express their concern regarding the safety of the township road. Marshall County contacted the county road supervisor, who opined that the road was not safe for the traveling public, particularly for the school bus and the U.S. mail carrier. Marshall County sent written notification to the Lincoln Township Board of Trustees, advising the trustees that if they did not repair the road within 2 weeks, Marshall County would proceed under [K.S.A. 68-124](#) with reasonable repairs to the township road and charge the expenses to Lincoln Township.

On October 17, 1994, the Lincoln Township Board of Trustees met with Marshall County and informed the commissioners that Lincoln Township did not have sufficient funds to make the needed repairs on the road. Lincoln Township believed the road was in satisfactory condition for travel except when it was wet and muddy, and denied Marshall County's demand to repair the road.

On October 24, 1994, Marshall County delivered rock to the township road. Lincoln Township applied the rock to the road. Marshall County billed Lincoln Township \$2,030.25 for the cost of the rock, labor, equipment, and material. The amount was due on or before March 10, 1995. Lincoln Township claimed it was without funds and refused to pay the amount due.

Marshall County filed an action in district court to recover the cost of the project. The district court granted summary judgment to Marshall County against Lincoln Township in the amount of \$2,030.25. Lincoln Township appeals, claiming Marshall County had no authority under the circumstances to repair or to order the township to repair the township road.

The resolution of the question presented depends on statutory interpretation. Interpretation of a statute is a question of law, and this court's review is unlimited.

[Hamilton v. State Farm Fire & Cas. Co.](#), 263 Kan. 875, 879, 953 P.2d 1027 (1998).

The district judge observed that the answer to the issue depends upon the interpretation of [K.S.A. 68-124](#), which provides in part:

"Where under the laws of the state of Kansas ... 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."

The district judge noted that although the primary responsibility for the maintenance of township roads in counties that do not operate under the county unit system is placed with the township board, as provided by [K.S.A. 68-526](#) and [68-124](#), there are certain situations where the board of county commissioners has the statutory authority to intervene. The provisions of [K.S.A. 68-124](#) allow the board of county commissioners to intervene when the township board "shall neglect, refuse or fail" to place and keep the roads in good condition. The district judge observed that if the county commissioners determined the road is not in good condition for travel, the commissioners had statutory authority to put the township road in good condition and charge the expenses to the township.

The district judge noted there was a difference of opinion between Marshall County and Lincoln Township as to whether the road was safe for travel or whether repairs were necessary to put the road in good condition. Lincoln Township had concluded, based on the use of the road, history of maintenance of the road, funds available for repairs, and other factors, that the road, except when wet or muddy, was in good condition for travel. Marshall County, after considering the same factors, disagreed with Lincoln Township and concluded that the road was not safe for public travel and required repair to put it in safe condition for travel when wet or muddy.

The district court observed that Marshall County had relied upon Attorney General Opinion No. 87-22 in determining it had the authority to make repairs to the road and to charge the expenses to Lincoln Township. The Attorney General had issued the opinion on February 5, 1987, at the request of the Marshall County Counselor. Before discussing that opinion, the district judge acknowledged that opinions issued by the Attorney General's office, though not binding on the court, are persuasive. See [Moore v. City of Lawrence](#), 232 Kan. 353, 362, 654 P.2d 445 (1982); [Greenwood v. Estes, Savings & Loan Commissioner](#), 210 Kan. 655, 661, 504 P.2d 206 (1972).

In Opinion No. 87-22, the Attorney General relied upon [Stock Farm Co. v. Pottawatomie County](#), 116 Kan. 315, 226 P. 781 (1924), and determined that Marshall County had authority under [K.S.A. 68-124](#) to make repairs to a township road and to charge the township for the expenses incurred if the township board failed to make the necessary repairs to keep the road in good condition for travel. In *Stock Farm Co.* this court stated:

"Where the township highway commissioners neglect to place and keep in condition a lawfully established township road, that duty may be lawfully performed by order of the board of county commissioners or the county engineer, and the expenses therefor charged against the township as provided in R.S. 68-124, 68-546." [116 Kan. 315, Syl. ¶ 5, 226 P. 781.](#)

The district judge then noted that [K.S.A. 68-124](#) contains no statement as to what repairs may be made or how the term "good condition for travel" is to be construed or applied. The district judge pointed out that the statute vests the board of county commissioners with the authority to determine whether the township board of highway commissioners has neglected, refused, or failed to repair and place the road in good condition. The district judge concluded that the repairs needed for the road to be in good condition for travel are left to the sound judgment and discretion of the board of county commissioners.

The district judge further noted that in [Pratt v. Fall River Township Board](#), 155 Kan. 442, 445, 125 P.2d 357 (1942), the Kansas Supreme Court, in a mandamus action relating to the repair and

maintenance of a township road, stated: "Where a public official or board is vested with discretion courts will not interfere to control that discretion in the absence of fraud, bad faith or gross impropriety on the part of the official. [Citations omitted.]"

The judge then noted that Marshall County, after consideration of the use of the road as a farm-to-market road, mail route, and school bus route, had concluded the road was not always in good condition for travel and needed to be repaired. Marshall County had attempted to obtain the cooperation of Lincoln Township in making the necessary repairs. After Lincoln Township refused to make the necessary repairs, Marshall County, following [K.S.A. 68-124](#), exercised its discretion and made the necessary repairs.

As it did in the district court, Lincoln Township argues on appeal that it did not fail to act; it specifically considered the condition of the road and elected not to repair a road that was safe for public travel except when it was wet or muddy. Lincoln Township asserts that Marshall County made a political decision to repair the road, rather than a decision based on safety considerations. By acting in such a manner, Lincoln Township contends Marshall County unlawfully usurped Lincoln Township's authority and repaired a road the township had determined to be in good condition for travel under normal weather conditions. Lincoln Township also alleges that the district court considered controverted facts regarding the condition of the road and improperly ruled on the motion for summary judgment.

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The trial court is required to resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. When opposing a motion for summary judgment, an adverse party must come forward with evidence to establish a dispute as to a material fact. In order to preclude summary judgment, the facts subject to the dispute must be material to the conclusive issues in the case. On appeal we apply the same rules, and where we find reasonable minds could differ as to the conclusions drawn from the evidence, summary judgment must be denied. [Saliba v. Union Pacific R.R. Co., 264 Kan. 128, 131-32, 955 P.2d 1189 \(1998\)](#).

After reviewing the record, we find that it is unnecessary to sort through the controverted and uncontroverted facts raised by Lincoln Township to resolve the question of whether the evidence indisputably established that the township road was not always in good condition for travel. The answer is found in affidavits submitted by Lincoln Township to the district court.

Lincoln Township attached three affidavits to its memorandum in opposition to Marshall County's motion for summary judgment: an affidavit by Loren Kent Stowell, treasurer of Lincoln Township; an affidavit by August Barnes, Lincoln Township grader operator; and an affidavit by Donald Van Dorn, trustee of Lincoln Township. All three affidavits stated: "When the road was wet it could be classed as a dirt road and would not be passable for ordinary traffic or school buses." The affidavits by Loren Kent Stowell and Donald Van Dorn stated that the road "was not dangerous and was passable to ordinary traffic at all times *except when it was muddy*." (Emphasis added.)

Lincoln Township's affidavits admit that the township road was not in good condition for travel when the weather was wet and the road was muddy. Each affidavit explained

that alternate passable roads were utilized by the school bus and the mail carrier during wet weather, *i.e.*, alternate routes were necessary because the township road was not in condition for travel during those times. The Lincoln Township affidavits clearly establish that the township road was not always in good condition for travel. In addition, the county road supervisor determined the road was not safe for the traveling public. When a statute is plain and unambiguous, the court must give effect to the intention of the legislature as expressed. *In re Marriage of Killman*, 264 Kan. 33, 42-43, 955 P.2d 1228 (1998). Under [K.S.A. 68-124](#), the duty of a township is to keep its roads in "good condition for travel." Where the township neglects, refuses, or fails to comply with the statute's mandate, the board of county commissioners of the county in which the township is located may exercise its discretion, conduct road repairs, and charge the township for the cost of the project. [K.S.A. 68-124](#).

[K.S.A. 68-124](#) is unambiguous. Lincoln Township had a duty to maintain its roads in good condition for travel, and Marshall County had discretion to order necessary repairs when Lincoln Township failed to do so. Marshall County determined that Lincoln Township had failed in its duty to keep the road in good condition for travel when the weather was wet or the road was muddy. Marshall County, as authorized by statute, exercised its discretion and made the determination that under the circumstances the road should be in good condition for travel in wet weather. Consequently, it made necessary repairs to the road and charged the expenses to the township.

Marshall County did not act fraudulently, in bad faith, or with gross impropriety; it clearly acted within the bounds of its discretion in ordering the repair of the road. The district court did not err in granting summary judgment in favor of Marshall County.

Cash Basis Law

The affidavit of Donald Van Dorn, trustee of Lincoln Township, states that there were not sufficient funds in the township budget to pay for the road repair. Lincoln Township argues that Marshall County cannot create a debt or obligation for Lincoln Township which Lincoln Township could not lawfully create. Lincoln Township asserts that Marshall County's expenditure for the township's road repair was unlawful because the township was prohibited by the Kansas Cash Basis Law, [K.S.A. 10-1101 et seq.](#), from expending funds or creating an indebtedness in excess of the amount of funds actually on hand or in excess of the amount it had budgeted.

The district judge observed that in Lincoln Township's response and opposition to Marshall County's motion for summary judgment, Lincoln Township asserted a defense that it did not have sufficient funds to pay for the cost of the repairs for the improvements to the road. That statement was originally made by Loren Stowell, Lincoln Township Treasurer to the board of county commissioners at its October 17, 1994, meeting. The judge found that the cost for the repairs was a major reason for Lincoln Township's refusal to make the repairs.

The judge observed that Lincoln Township is subject to the provisions of the Kansas Cash Basis Law. It then noted that the provisions of [K.S.A. 68-124](#) do not provide that a township's lack of adequate funds to repair a road creates a bar to the authority of the board of county commissioners to proceed with the repairs. The district court observed that lack of funds may, at least temporarily, prevent payment to the county for the repairs to a township road.

The judge noted that there are provisions under the cash basis law by which an

indebtedness in excess of funds on hand may be incurred, such as the issuance of bonds, temporary notes, or no fund warrants, as permitted by [K.S.A. 10-1116](#). The judge concluded the fact Lincoln Township did not have adequate cash funds available to make repairs to the road did not justify or excuse it from making arrangements for the repair of the road or attempting to work out some arrangement with Marshall County for payment of the expenses incurred for the repairs.

Whether the cash basis law constitutes a defense against Marshall County's claim requires this court to review the applicable statutes. There are exceptions to the cash basis law. [K.S.A. 79-2938](#) allows expenditures for expenses in excess of a governing body's budget through the use of no-fund warrants. No-fund warrants may be issued where, "because of unforeseen circumstances the revenues of the current budget year for any fund are insufficient to finance the adopted budget of expenditures for such fund for the current budget year." [K.S.A. 79-2938](#). The budget must already include the expenditures before issuance of no-fund warrants may be approved. If the township must spend more than the amount originally budgeted through the use of no-fund warrants, the township must amend its budget pursuant to [K.S.A. 79-2929a](#).

No-fund warrants will not be authorized by the State Board of Tax Appeals except upon a finding of extreme emergency need. [K.S.A. 79-5031](#). "The term 'extreme emergency need' shall include, but not be limited to, amounts required to comply with state or federal requirements in such areas as ... public health and safety." [K.S.A. 79-5030](#). Clearly, the repair of roads which are not safe for travel is a duty imposed by the State on townships for the purpose of public safety.

Lincoln Township may not use the cash basis law to opt out of complying with statutorily imposed duties. Lincoln Township has not demonstrated to this court that incurring the financial obligation associated with repairing the township road pursuant to [K.S.A. 68-124](#) is unlawful.

Affirmed.

[ABBOTT](#), J., dissenting:

The trial court granted summary judgment in this case. I believe that to be error. I am also troubled by the fact it appears to me we have imposed a duty concerning unimproved roads in Kansas where no duty previously existed. This may have far-reaching effects, not only on townships but on counties, to improve the many miles of unimproved roads in Kansas, as well as potential tort liability.

First, I believe summary judgment was premature. A real question exists as to whether the Board of County Commissioners of Marshall County (Marshall County) repaired and put the road in good condition for travel. When the record is examined, as we must view it, in the light most favorable to Lincoln Township, Marshall County "dumped" 257 tons of rock on a 1 1/2-mile stretch of road. Marshall County does not appear to have spread the rock. Thus, a question remains as to whether Marshall County improved the road for travel.

My main concern is that there has been no duty in Kansas to make unimproved roads passable during a wet period. Lincoln Township has 18 miles of gravel road and 22 miles of unimproved dirt roads. Statewide, there are over 5,000 miles of unimproved dirt roads. I would not hazard a guess as to how many low-water crossings exist in Kansas. Since statehood, persons using low-water crossings and unimproved dirt roads have been inconvenienced by having to take the "long way" home when the creek rose or the road

was muddy. Now we say one political group can make improvements, but order another political group to pay the cost of such improvements if the road becomes unusable when it is muddy.

I recognize that Marshall County relied on the fact that the road was used as a farm-to-market road and was used by school busses and by a rural mail carrier. [K.S.A. 68-1701](#) provides that the board of county commissioners may designate roads used for such purposes and receive federal funds for their improvements. Obviously, Marshall County did not consider this road of sufficient importance as a farm-to-market road, school bus route, and rural mail carrier route to include it under [K.S.A. 68-1701](#), but it relies on those three factors to impose a cost on the Township.

Interestingly enough, this court has held that "[w]hile a county is required to improve a county road, it is not required to surface it with gravel." [Neosho County Comm'rs v. Burdick, 120 Kan. 698, Syl. ¶ 1, 244 P. 866 \(1926\)](#). The amount of maintenance on a road has always been discretionary with the county commissioners and should be with the township board. Marshall County has the ability to take over the maintenance of all roads in the county or, under [K.S.A. 68-1701](#), it could take over this specific 1 1/2 miles of roadway if it deems it important enough a farm-to-market road, school bus route, or rural mail carrier route. When the legislature adopted [K.S.A. 68-124](#), I do not believe that it ever intended to allow a board of county commissioners to cause an unimproved dirt road to be graveled at a township's expense solely because the road succumbs to nature and becomes muddy when it rains.

I am concerned that we may be imposing tort liability on counties and townships for failure to gravel unimproved dirt roads. This is because by allowing an exception to the cash basis law, we are saying muddy roads are unsafe. The cash basis law allows an exception for unsafe emergency situations. Muddy roads are not necessarily dangerous roads. They may be irritating and inconvenient, but they do not create an unsafe emergency situation.

I would emphasize that we are dealing with what appears to be a normal, ordinary, dirt road which gets muddy when it rains. The granting of summary judgment in this case is declaring that as a matter of law, the county commissioners in any county that have a township road system can gravel any township road and force the township to pay for it solely because it gets muddy when it rains.

I would reverse the trial court.

[MCFARLAND](#), C.J., and [DAVIS](#), J., join in the foregoing dissenting opinion.
Kan., 1998.

**KSA CHAPTER 80.--TOWNSHIPS AND TOWNSHIP OFFICERS
ARTICLE 9.--PUBLIC PARKS AND CEMETERIES**

80-901. Parks or cemeteries; establishment.

Any municipal township in any county in the state is authorized to provide and secure to the inhabitants thereof, either by purchase or by acquisition, from any person or persons, or from any cemetery organization, corporation or association of persons already in existence, a park or parks or a cemetery or cemeteries, or both such park or parks and cemetery or cemeteries within such township in the manner and form hereinafter designated: *Provided*, That nothing in this act shall be construed to restrict or modify other public cemetery acts.

History: L. 1887, ch. 235, § 1; L. 1921, ch. 295, § 1; L. 1923, ch. 240, § 1; Feb. 28; R.S. 1923, 80-901.

80-902. Same; bonds; limitation.

In order to pay any expenditures for the purposes contemplated by this act, as amended, such municipal township may issue the bonds of such township in the manner provided by law, in an amount not to exceed two percent of the assessed valuation thereof: *Provided*, That no township in any case shall issue bonds in an amount exceeding twenty thousand dollars by virtue of this act.

History: R.S. 1923, 80-902.

80-903. Tax levies for bonds and interest and for expenses and improvements.

Any township issuing bonds under this act shall annually levy a tax sufficient to pay the interest thereon, and after five years an amount sufficient to create a sinking fund to pay the principal at maturity; and any township purchasing or acquiring or acting as trustee for grounds for a park or parks, or cemetery or cemeteries is empowered and authorized to annually levy and collect a tax to provide a fund for the purpose of meeting the annual expense of such grounds, and such other improvements as the township board deems necessary.

History: L. 1887, ch. 235, § 3; L. 1909, ch. 260, § 1; L. 1921, ch. 295, § 3; L. 1923, ch. 240, § 3; R.S. 1923, 80-903; L. 1961, ch. 463, § 1; L. 1970, ch. 385, § 5; L. 1999, ch. 154, § 55; May 27.

80-904. Same; petition; election; duties of county commissioners.

The purchasing and securing of suitable grounds for the purpose of this act or the acquiring and taking over of parks and cemeteries already in existence, either by becoming absolute owners or as trustees under existing laws, shall not be done until twenty-five percent of the resident taxpayers of any such township shall petition in writing the board of county commissioners to submit to the qualified voters of such

township a proposition to purchase, or secure, and maintain or acquire and take over and maintain a public park or parks or cemetery or cemeteries, or both such public parks and cemeteries and issue bonds of such township or levy a tax in payment therefor.

Said petition shall particularly describe the parcel or parcels or tract or tracts of land to be so purchased or secured and maintained, or if paid for by taxation, the number of annual installments into which the whole tax is to be divided, and if such petition be found true then the board of county commissioners shall cause an election to be held to determine whether such purchase or securing the grounds and issue of bonds therefor, if any are provided for, shall be made, and the same shall be submitted to the qualified electors of such township at a special or general election, as the same shall be specified in said petition: *Provided*, That where parks or cemeteries are already in existence and operated by a park or cemetery organization, corporation or association of persons are to be taken over and acquired that such petition, as is in this section provided, shall not be acted upon by the board of county commissioners until there has been filed with such board a written proposition stating the price, terms and conditions upon which the park or parks or cemetery association or cemetery associations engage themselves to convey to the township all the property of such association or associations, corporation or corporations, or organization or organizations within such township, has been filed with the clerk of the township board.

History: L. 1887, ch. 235, § 4; L. 1909, ch. 260, § 2; L. 1921, ch. 295, § 2; L. 1923, ch. 240, § 2; Feb. 28; R.S. 1923, 80-904.

80-905. Parks and cemeteries in one or more townships; establishment.

Any municipal township, or, two or more such townships combined in any county in this state is authorized to provide and secure to the inhabitants of such township, or townships, whether by purchase or acquisition, from any person or persons, or from any cemetery organization, corporation or association of persons already in existence, a park or parks or a cemetery or cemeteries, or both such park or parks and cemetery or cemeteries within such township, or townships, in the manner and form hereinafter designated: *Provided*, That nothing in this act shall be construed to restrict or modify other public cemetery acts.

History: L. 1923, ch. 241, § 1; March 3; R.S. 1923, 80-905.

80-906. Same; petition; election; duties of county commissioners.

The purchasing and securing of suitable grounds for the purpose of this act, or the acquiring and taking over of parks and cemeteries already in existence, whether by becoming absolute owners, or as trustee, under existing laws, shall not be done until twenty-five percent of the resident taxpayers of any such township, or townships, shall petition, in writing, the board of county commissioners to submit to the qualified voters of such township, or townships, a proposition to purchase or secure and maintain, or acquire and take over and maintain, a public park or parks or cemetery or cemeteries, or both such public parks and cemeteries, and issue bonds of such township or townships,

or levy a tax in payment therefor.

Said petition shall particularly describe the parcel or parcels or tract or tracts of land to be so purchased or secured and maintained, or if paid for by taxation the number of annual installments into which the whole tax is to be divided; and if such petition be found true in accordance with law, then the board of county commissioners shall cause an election to be held to determine whether such purchase or securing the grounds and issue of bonds therefor, if any are provided for, shall be made, and the same shall be submitted to the qualified electors of such township, or townships, at a special or general election, as the same shall be specified in said petition: *Provided*, That where parks or cemeteries are already in existence and operated by a park or cemetery organization, corporation or association of persons are to be taken over and acquired that such petition, as is in this section provided, shall not be acted upon by the board of county commissioners until there has been filed with such board a written proposition stating the price, terms and conditions upon which the park or parks or cemetery association or cemetery associations engage themselves to convey to the township, or townships, all the property of such association or associations, corporation or corporations, or organization or organizations within such township, or townships, has been filed with the clerks of the township boards.

History: L. 1923, ch. 241, § 2; March 3; R.S. 1923, 80-906.

80-907. Same; tax levy for sinking fund; limitation.

Any township, or townships, issuing bonds under this act shall annually levy a tax sufficient to pay the interest thereon, and after five years an amount sufficient to create a sinking fund to pay the principal at maturity; and any township, or townships, purchasing or acquiring or acting as trustee for grounds for a park or parks, or cemetery or cemeteries, is empowered and authorized to annually levy and collect a tax, not exceeding in any one year two mills on the dollar, to provide a fund for the purpose of meeting the annual expense of such grounds.

History: L. 1923, ch. 241, § 3; March 3; R.S. 1923, 80-907.

80-908. Same; cooperation by cities of second or third classes; petition; ordinance; tax levy.

Whenever any cities of the second or third class located within the county shall desire to cooperate with any municipal township, or townships, under the provisions of this act, the governing body of any such cities of the second or third class and whenever such township, or townships, are willing to accept such cooperation of any such city or cities the petition shall state such fact and if the residents and taxpayers of any such city or cities desire to accept such cooperation and shall present a petition of the same character to the governing body of any such city or cities and such governing body shall enact an ordinance joining with such township, or townships, then and in that event such townships and said cities shall become the joint owners of said parks and cemeteries under the provisions of the preceding section and the township trustee of every such township and the mayor of every such city shall constitute a board of trustees having full

power and control of said parks and cemeteries and shall annually determine the tax that shall be levied by every such city or township to comply with the provisions and limitations prescribed by [K.S.A. 80-907](#).

History: L. 1923, ch. 241, § 4; March 3; R.S. 1923, 80-908.

80-909. Same; sections 80-905 to 80-909 supplemental.

This act shall be supplemental to and in nowise contradictory of the provisions of chapter 295 [\[FN*\]](#) of the Laws of Kansas for 1921.

History: L. 1923, ch. 241, § 5; March 3; R.S. 1923, 80-909.

80-910. Parks or cemeteries; petition under 80-901 to 80-904; order for election.

The county commissioners, for such township, upon the presentation of the foregoing petition and such other conditions as may be deemed advisable, to the chairman of the board, shall convene and make an order, which order shall embrace the terms and conditions set forth in the petition, and shall fix the time for holding such election, which shall be within sixty days from the day on which the commissioners shall be convened.

History: L. 1887, ch. 235, § 5; March 15; R.S. 1923, 80-910.

80-911. Same; bonds; issuance.

If a majority of the qualified electors voting at such election vote for such purchase and use, and issue of bonds, the board of county commissioners, for and in behalf of such township, shall issue such bonds as may be required by such proposition in the name of such township. When issued, such bonds shall be signed by the chairperson of the board of county commissioners, and attested by the county clerk, under the seal of such county.

History: L. 1887, ch. 235, § 7; R.S. 1923, 80-911; L. 1983, ch. 49, § 99; May 12.

80-912. Same; cemetery lots; record and charges.

Any citizen of any township owning and maintaining a cemetery under the provisions of this act, upon the payment of one dollar to the trustee of such township, which money shall be credited to the contingent fund, shall have the right and privilege to one lot in such cemetery for burial purposes; and the lots of such cemetery shall be laid off in uniform size, not less than seven by fourteen feet, with alleys and streets, as the board of such township shall direct. The clerk of such township shall keep an exact record of persons buried and location of graves in such cemeteries: *Provided*, That in case of any cemetery acquired by the township since January 1, 1915, the township board may charge any citizen residing in the township such sum of money as it deems a reasonable value for a lot or lots in such cemetery, and may charge persons not resident in the township an amount not to exceed 50 percentum additional to such reasonable value, for the upkeep of the cemetery.

History: L. 1887, ch. 235, § 8; L. 1915, ch. 100, § 1; May 22; R.S. 1923, 80-912.

80-913. Same; use of funds; annual report; unlawful acts.

The town board of such township shall have full authority and power to use the funds provided by the issue of bonds as hereinbefore conditioned, in purchasing, maintaining and improving the parks and cemeteries owned in such township by virtue of this act: *Provided*, The trustee of such township shall make an annual report on the condition of such park and cemetery; also a full statement of the expenditures and receipts made and received thereon: *Provided further*, That gambling, horse-racing and selling of intoxicating liquors are forever forbidden and prohibited on such grounds, or adjacent thereto.

History: L. 1887, ch. 235, § 9; March 15; R.S. 1923, 80-913.

80-914. Purchase of unsold school lands for cemetery or burial ground.

Any municipal township of this state is hereby authorized and shall be entitled to purchase and acquire for a cemetery or burial ground any quantity of land not exceeding five acres in any one tract or lot of any unsold school lands situated in this state, and shall acquire title to the same according to the method and procedure prescribed for securing sites for schoolhouses on school lands in chapter 122 [\[FN*\]](#) of the Session Laws of 1876: *Provided*, That such tract or lot shall be situate on one of the boundary lines of the section or any quarter section thereof.

History: L. 1901, ch. 397, § 1; May 1; R.S. 1923, 80-914.

80-915. Acquisition of cemetery association or corporation property; maintenance.

Whenever any cemetery association or corporation maintaining or owning a cemetery shall desire to convey such cemetery to the municipal township in which the cemetery is located for the purpose of making the cemetery a public burying ground, it shall be lawful for the township board to receive and take over the management and control of such cemetery upon such terms as may be agreed upon. When such cemetery becomes the property of the township it shall be the duty of the township to maintain the same at an annual expense of not less than \$25 nor more than \$100. Nothing in this act shall be construed to restrict or modify other public cemetery acts. Except as provided in [K.S.A. 80-941](#) and [80-942](#), and amendments thereto, no township board shall agree to take over any such cemetery where the township already has and maintains a public cemetery.

History: L. 1911, ch. 138, § 1; R.S. 1923, 80-915; L. 1992, ch. 42, § 1; L. 1997, ch. 74, § 2; Apr. 17.

80-916. Care of abandoned cemeteries.

From and after the passage of this act it shall be the duty of the township board of any township within the state of Kansas in which there is situated an abandoned cemetery to provide for the care of such cemetery and to provide for the proper and seasonable cutting of all weeds and grass therein at least twice each year; and for such purposes

such township board shall appropriate and expend not more than \$500 per year for each such cemetery.

History: L. 1917, ch. 84, § 1; L. 1919, ch. 105, § 1; R.S. 1923, 80-916; L. 1982, ch. 72, § 14; July 1.

80-917. Cemetery chapel.

Any township in the state of Kansas owning or operating as trustees a cemetery is authorized and empowered to procure, acquire and control a building to be used as a chapel in connection with such cemetery in which to hold burial or funeral services and such other devotional or religious exercises as the board may, from time to time, allow: *Provided*, That the title to such chapel shall be vested in the township maintaining such cemetery.

History: L. 1921, ch. 91, § 1; Feb. 27; R.S. 1923, 80-917.

80-918. Same; petition.

The township board shall not acquire, secure nor operate a chapel as provided in [K.S.A. 80-917](#) except upon the application so to do through a petition presented to it signed by at least twenty-five percent of the resident taxpayers of the township.

History: L. 1921, ch. 91, § 2; Feb. 27; R.S. 1923, 80-918.

80-919. Same; election; site; erection; tax levy, limitation.

Upon the receipt of such petition the township board shall call an election at which the question of the acquiring of a site for and the building of a chapel as provided hereinbefore shall be submitted to the electors of the township, at which election the proposition submitted shall be "Shall the township build and maintain a chapel in connection with the township cemetery at an initial cost of _____ dollars?" If the majority of the votes cast at said election shall favor such proposition to construct and operate a chapel the township board shall proceed to procure a site for such chapel adjacent to the cemetery not exceeding one acre in area and to build and maintain a suitable building for a chapel thereon. The mode of acquiring the site shall be by purchase, donation and contribution, condemnation, or gift. The board of township commissioners is authorized and empowered to levy a tax sufficient to pay for the site and erect the building thereon: *Provided*, That in no event shall the combined cost of the site and the building exceed the amount of money to be raised by an annual levy of two mills on every dollar of taxable property in the township for a period of five (5) years.

History: L. 1921, ch. 91, § 3; Feb. 27; R.S. 1923, 80-919.

80-923. Board of trustees of joint township parks or cemeteries; tax levies.

Where two or more townships in the state of Kansas combine, and purchase or acquire or act as trustee for grounds for a park or parks, or cemetery or cemeteries, the township board of each of such combined townships shall constitute a board of trustees, having

full power and control of said parks and cemeteries and shall annually determine the tax to be levied by every such township to comply with the provisions and limitations of [K.S.A. 80-907](#).

History: L. 1937, ch. 385, § 1; March 29

80-932. Tax levy for care and maintenance of certain cemeteries.

The township board of any township is hereby authorized and empowered to levy an annual tax on all taxable tangible property in such townships, including such property of cities of the third class, for the purpose of providing funds to be used for the care and maintenance of cemeteries in such townships for which no provision is made by law for the levying of taxes for such care and maintenance.

History: L. 1947, ch. 473, § 1; L. 1970, ch. 385, § 6; L. 1999, ch. 154, § 56; May 27.

80-933. Lease of lake or park; conditions; publication; protest petition.

Whenever the title to any real property within the area of which there may be included a lake or park may be vested in a township, the township board is hereby authorized to lease such lake or park or any portion thereof for not less than two (2) years nor more than thirty-three (33) years to any 4-H club or livestock association, to any county fair association, to any nonprofit corporation, or to any other charitable or farm organization: *Provided*, That every such lease shall provide that the lessee shall at its own expense, construct and install all of the facilities and improvements to be occupied and used by it under such lease, upon such terms, conditions and control as the township board may require and subject to the condition that all such facilities and improvements so constructed by the lessee shall become and be the property of the township upon the expiration or cancellation of the term of such lease or upon abandonment or forfeiture thereof by the lessee prior to its expiration.

Such lease shall be effective and binding upon the township, however, only after twenty (20) days following the final publication of such lease including all the terms thereof in some newspaper of general circulation in the township for three (3) consecutive weeks: *Provided*, That if within such twenty (20) days following the final publication of the lease there be filed with the township clerk a petition signed by twenty-five percent (25%) of the electors of such township as determined by the total vote for secretary of state in such township at the last preceding general election protesting the execution of such lease, then such lease shall be void and of no effect.

History: L. 1949, ch. 504, § 1; L. 1961, ch. 464, § 1; April 6.

80-934. Cemetery abandoned by private association; title vested in township.

Any private township cemetery association organized under the laws of Kansas as a nonprofit corporation which has failed to operate and maintain its cemetery for a period of more than ten (10) years and which has been maintained by the township under the

provisions of [K.S.A. 80-916](#) for a period of at least five (5) years may be declared abandoned and extinct by order of the district court of the county in which the cemetery is located and the title to the cemetery property of such association vested in the township in the manner hereinafter provided.

History: L. 1970, ch. 405, § 1; July 1.

80-935. Same; petition to district court; order transferring title.

Any member of the township board or any resident of a township in which the cemetery was organized and in which the cemetery is located may petition the district court of the county setting forth facts authorizing an order of abandonment or extinction and disposition of property. Upon presentation of such a petition to the court the court may proceed in a summary manner after such notice as the court may prescribe to inquire into the merits of such application; and if upon examination by the court it shall satisfactorily appear that the making of the order of the disposition of the property applied for is necessary or proper, such court shall make a final order declaring such cemetery association to be abandoned and extinct and transferring the cemetery property and title and possession thereof to the township in which the cemetery of the association was located; it being the intent and purpose of this act to preserve the cemetery property formerly owned by the association for cemetery purposes.

History: L. 1970, ch. 405, § 2; July 1.

80-936. Same; care and maintenance by township.

After the order providing for the transfer and vesting of the cemetery property in the township has become final, the township board shall thereafter care for and maintain the cemetery formerly the property of the cemetery association in the same manner as though such township cemetery were organized pursuant to the provisions of [K.S.A. 80-901](#) et seq.

History: L. 1970, ch. 405, § 3; July 1.

80-937. Township lakes in certain townships; issuance of bonds for restoration; election.

Any municipal township having an assessed tangible valuation of more than three million dollars (\$3,000,000) and less than five million dollars (\$5,000,000) which has heretofore acquired a township lake and is presently operating such lake as a municipal function is hereby authorized to issue bonds of the township in the manner provided by law and in an amount not to exceed one hundred thousand dollars (\$100,000), for the purpose of providing revenue for restoration of such lake, including the dredging thereof and making necessary improvements in connection therewith.

Before any such bonds shall be issued, the question of issuing the same shall first be submitted to a vote of the qualified electors of the township at a general election or at a special election called for the purpose of submitting the question; and no bonds shall be issued until a majority of the qualified electors of the township voting on the question shall have declared by their votes in favor of issuing said bonds. Such election may be

called on motion of the township officers and shall be called if a petition signed by twenty-five percent (25%) of the electors of the township as shown by the vote cast for governor at the last preceding election is filed with the township clerk requesting such election.

If the bonds are authorized at such election, by a majority vote of qualified electors voting thereon, such bonds shall be issued, sold, delivered and retired in accordance with article 1 of chapter 10 of the Kansas Statutes Annotated and acts amendatory thereof and supplemental thereto, except that such bonds shall mature within a maximum period of ten (10) years from date of issue; and none of the debt limitations provided by law shall apply to bonds issued hereunder.

History: L. 1971, ch. 325, § 1; July 1.

80-938. Tax levy for care and maintenance of certain cemeteries; election upon petition.

In any county having a population of not less than sixteen thousand (16,000) and not more than eighteen thousand (18,000) in which there is located a city of the first class and in which there is located a township cemetery district in which there are at least nine (9) cemeteries, the board of county commissioners is hereby authorized to make an annual levy of not to exceed one (1) mill on all the taxable tangible property within said township cemetery district for the purpose of providing funds for the care and maintenance of cemeteries within such district. Such tax levy shall be in addition to all other tax levies authorized or limited by law and shall not be subject to or within any aggregate tax levy limit prescribed by law.

No tax levy provided for or authorized by this section may be made if prior to the levy of such tax a petition in opposition to the levy, signed by not less than five percent (5%) of the qualified electors in such township cemetery district, is filed with the county election officer. If such petition is filed within the prescribed time, no such tax may be levied unless a majority of the qualified electors of the township cemetery district approve such levy at the next general election.

History: L. 1975, ch. 132, § 4; July 1.

80-939. Recreational facilities; election; tax levies.

(a) Whenever the governing body of any township proposes to provide, establish and maintain recreational facilities and to levy an annual tax therefor, such proposition shall be submitted to the qualified electors of such township for approval at a regular or special election held for such purpose.

(b) If a majority of the electors voting on the proposition are in favor thereof, the governing body of such township shall have the power to levy an annual tax upon all the taxable tangible property within such township for the purpose of establishing, providing and maintaining recreational facilities. Such tax levy shall be at a rate which, when multiplied by the total assessed tangible valuation of the township, will not result in

producing more than one thousand dollars (\$1,000) in any one year, except that in no event shall such levy exceed two (2) mills.

History: L. 1975, ch. 507, § 1; July 1.

80-940. Disorganization of cemetery districts in certain townships; property transferred to township.

If the board of township trustees of any township or townships located in a county having a population of more than forty-three thousand (43,000) and less than forty-eight thousand (48,000) agrees thereto, any cemetery district located in such township or townships may, with the approval of the board of directors thereof, be disorganized. Whenever the board of directors shall approve the disorganization of any such cemetery district, all books, records, papers, moneys and title to all property owned by such cemetery district shall vest in the township, and shall be maintained thereby.

History: L. 1978, ch. 78, § 1; July 1.

80-941. Conveyance of cemetery property to Attica township in Sedgwick county; transfer of books, records, papers and fund.

(a) The township board of Attica township in Sedgwick county is hereby authorized to acquire from the Pleasant Ridge cemetery association, with the consent of such association, the following described cemetery property and any improvements thereon: Beginning at the northeast corner of the northwest quarter of section 29, township 27 south, range 2 west of the 6th P.M., Sedgwick county, Kansas, then running west 532 feet, then running south 487 feet, then running east 268.5 feet, then running south 8 feet 11 links, then running east 264 feet to the east line, then running north 495 feet 11 links to the point of beginning.

(b) Upon the conveyance of the cemetery property under subsection (a), title to all such property shall vest in Attica township, and the permanent maintenance fund, if any, together with any investments then outstanding, and all books, records and papers of such cemetery shall be transferred to the treasurer of such township and shall become the property thereof. Upon the transfer of such property and funds, the township board shall care for and maintain such cemetery with any moneys of the cemetery corporation including the principal of and income from the permanent maintenance fund, if any; and, if such moneys are insufficient to properly maintain such cemetery, with funds of the township. The principal of and income from the permanent maintenance fund may be deposited in any appropriate fund of the township or may be invested in the manner provided for other township money, but shall be used exclusively for care and maintenance of such cemetery.

History: L. 1992, ch. 42, § 2; July 1.

80-942. Conveyance of cemetery property to Tecumseh township in Shawnee county; transfer of books, records, papers and fund.

(a) The township board of Tecumseh township in Shawnee county is hereby authorized to acquire from the Bethel cemetery association, with the consent of such association, the following described cemetery property and any improvements thereon:

Beginning at a point on the south line 20 feet west of the southeast corner of the northwest quarter of section 13 in township 12 of range 16 west of the 6th P.M., Shawnee county, Kansas, thence running north 27 rods, thence west 12 rods, thence south 27 rods to the south line of such quarter, thence east to the point of beginning.

(b) Upon the conveyance of the cemetery property under subsection (a), title to all such property shall vest in Tecumseh township, and the permanent maintenance fund, if any, together with any investments then outstanding, and all books, records and papers of such cemetery shall be transferred to the treasurer of such township and shall become the property thereof. Upon the transfer of such property and funds, the township board shall care for and maintain such cemetery with any moneys of the cemetery corporation including the principal of and income from the permanent maintenance fund, if any; and, if such moneys are insufficient to properly maintain such cemetery, with funds of the township. The principal of and income from the permanent maintenance fund may be deposited in any appropriate fund of the township or may be invested in the manner provided for other township money, but shall be used exclusively for care and maintenance of such cemetery.

History: L. 1997, ch. 74, § 3; Apr. 17.

80-943. Conveyance of cemetery property to Topeka township in Shawnee county; transfer of books, records, papers and fund.

(a) The township board of Topeka township in Shawnee county is hereby authorized to acquire from the Lynn Creek cemetery association, with the consent of such association, the following described cemetery property and any improvements thereon, commonly known as the Lynn Creek Cemetery, Shawnee county, Kansas:

That part of the southeast quarter of section 33 in township 12 south of baseline in range 16 east of the principal meridian, described as follows: Commencing at the southwest corner of the above described parcel of ground, thence north 21 rods, thence east 40 rods, thence south 21 rods, thence west 40 rods to the place of beginning.

(b) Upon the conveyance of the cemetery property under subsection (a), title to all such property shall vest in Topeka township, and the permanent maintenance fund, if any, together with any investments then outstanding, and all books, records and papers of such cemetery shall be transferred to the treasurer of such township and shall become the property thereof. Upon the transfer of such property and funds, the township board shall care for and maintain such cemetery with any moneys of the cemetery corporation including the principal of and income from the permanent maintenance fund, if any; and, if such moneys are insufficient to properly maintain such cemetery, with funds of the

township. The principal of and income from the permanent maintenance fund may be deposited in any appropriate fund of the township or may be invested in the manner provided for other township money, but shall be used exclusively for care and maintenance of such cemetery.

History: L. 2000, ch. 43, § 1; July 1.

**KSA CHAPTER 80.--TOWNSHIPS AND TOWNSHIP OFFICERS
ARTICLE 11.--DISORGANIZATION, REORGANIZATION AND
CONSOLIDATION**

80-1101a. Same; when disorganization effective.

Such disorganization of a township hereunder shall be effective upon the filing with the county clerk of such county the resignation of the elective incumbent officers of such township or, in any event, at the expiration of the term of office of such incumbents.

History: L. 1947, ch. 479, § 2; L. 2008, ch. 163, § 27; July 1.

80-1102a. Same; application of other laws; bonded debt; road and maintenance agreement.

If any such township so disorganized shall at the time of its disorganization have any indebtedness, the board of county commissioners shall provide for the payment thereof in the manner provided in K.S.A. 80-1103 and 80-1104, and amendments thereto. If such township has any bonded indebtedness the obligation shall remain a charge upon the territory of the disorganized township in accordance with the applicable provisions of K.S.A. 10-119, and amendments thereto. The effective date of such township disorganization, the provisions for the naming of townships, the determination of boundaries and polling places, the transfer of records, funds and property other than funds to pay indebtedness shall be determined as provided by the provisions of K.S.A. 80-1101a, and amendments thereto.

Any road construction and maintenance agreement which had been entered into between the township to be disorganized and the county under K.S.A. 68-572, and amendments thereto, shall terminate when money and equipment belonging to the disorganized township are delivered to the county.

History: L. 1967, ch. 509, § 2; L. 2008, ch. 163, § 28; July 1.

80-1103. Same; tax levy to pay township indebtedness, limitation; warrants.

If any township so disorganized shall at the time of its disorganization have any indebtedness, it shall be the duty of the county commissioners of the county to provide for the payment of such outstanding indebtedness by making a levy of taxes therefor upon all real and personal property in the territory comprising such disorganized township at the time of its disorganization, which tax shall be entered by the clerk of the county on the tax roll the same as other taxes. No such levy shall exceed ten mills on the dollar of the assessed valuation in any one year; that the county treasurer shall keep the money collected from such township in a special fund, and the county commissioners are authorized to audit the floating indebtedness of said disorganized township, and issue warrants upon the funds thus provided in payment of said floating indebtedness.

History: L. 1899, ch. 277, § 3; R.S. 1923, 80-1103; L. 2008, ch. 163, § 29; July 1.

80-1104. Same; records and funds.

The books, papers, funds and any other assets belonging to such township so disorganized shall be delivered over by the officers thereof to the county commissioners, who shall dispose of said assets, and all money received therefor shall be included in the special fund provided for in K.S.A. 80-1103, and amendments thereto.

History: L. 1899, ch. 277, § 5; R.S. 1923, 80-1104; L. 2008, ch. 163, § 30; July 1.

80-1105. Disorganization and reorganization in certain counties under 3,000.

Townships in counties containing a population of less than 3,000 inhabitants and in which there is no township indebtedness may be abolished and new townships created as in this act provided.

History: L. 1933, ch. 329, § 1; June 5.

80-1109. Consolidation of two or more townships; procedure; resolution, agreement, election.

Two or more townships may consolidate into a single township which may be one of the consolidated townships or a new township to be formed by means of such consolidation. The members of the township boards or a majority of them on the respective boards shall by resolution declare such consolidation to be desirable and arrange for a meeting between the respective boards. Members of township boards may enter into an agreement signed by such members prescribing the terms and conditions of the consolidation and designate the officers of the township until new township officers are elected and take office as provided by law. Such resolutions of the agreement and consolidation duly certified by the respective township clerks shall be presented to the board of county commissioners of the county in which said townships are situated by delivering the same to the county clerk of said county. Within 10 days after such receipt by the county commissioners they shall call an election, noticed and called in the manner as bond elections under the general bond law in said townships for the purpose of approval or disapproval of agreement of consolidation. The ballot used in such elections shall conform to the provisions of K.S.A. 25-605, and amendments thereto, and the question shall be stated substantially as follows: "Shall the township of _____ and the township of _____ be consolidated into one township and the new township named _____?" If a majority of the qualified electors in each township shall vote to consolidate, the board of county commissioners shall adopt a resolution certifying

that the consolidation is in effect in accordance with the agreement and the respective townships shall thereupon be considered disorganized.

History: L. 1963, ch. 498, § 1; L. 2008, ch. 163, § 31; July 1.

80-1110. Disorganization of certain townships in counties having county unit road system.

Townships located in counties which have adopted the county unit road system as provided by K.S.A. 68-515b, and amendments thereto, or in townships having more than 200 residents may be disorganized and the territory or parts thereof attached to any other township or townships within such county which are contiguous with the township or any one of the townships being disorganized, in the manner hereinafter provided.

History: L. 1969, ch. 471, § 1; L. 2008, ch. 163, § 32; July 1.

80-1111. Same; determination by board of county commissioners; resolution of intent; public hearings; petition opposing disorganization; resolution disorganizing township.

Whenever the board of county commissioners of any such county shall determine that it is in the best interests of the inhabitants of any township or townships located within such county to disorganize the same, such board shall adopt a resolution stating its intentions to disorganize such township or townships and the attachment of the territory of the same to another township or townships within the county. Such resolution shall fix a time, which shall be not more than 40 days after the date of the last publication of such resolution, and a place, within such township or townships or at such other place within such county as shall be designated by the board of county commissioners, for the holding of a hearing or hearings upon the question of disorganizing such township or townships. Such resolution shall also contain a statement that unless a petition, signed by a majority of the electors of any township proposed to be disorganized opposing the disorganization of such township, is filed in the office of the county clerk within 30 days after the date of the last publication of such resolution, such township or townships will be disorganized. Such resolution shall be published once each week for two consecutive weeks in a newspaper having general circulation in the township or townships proposed to be disorganized and a copy thereof sent to the clerk of the township board of such township or townships.

If a petition in opposition is not filed in compliance with the provisions of this section, then the board of county commissioners shall adopt a resolution disorganizing such township, attaching the same or portions thereof as herein provided and make such order or orders as are authorized by this act.

History: L. 1969, ch. 471, § 2; L. 2008, ch. 163, § 33; July 1.

80-1112. Same; effective date of disorganization and attachment of territory.

The disorganization of any township and the attachment of the territory thereof to another township or townships under the provisions of this act shall be effective for other than tax purposes upon the filing, with the county clerk of the county, of the resignation of the elective incumbent officers of such township or at the expiration of the term of office of such township officers and no officers shall be elected to succeed the officers of any township in office at the time of the disorganization of such township. The disorganization of any such township shall be effective for taxation purposes upon the date prescribed by K.S.A. 79-1807 and amendments thereto.

History: L. 1969, ch. 471, § 3; April 25.

80-1113. Same; disposition of books, records and assets; payment of outstanding indebtedness.

All books, papers, records, moneys and other assets belonging to any township disorganized under the provisions of this act shall be delivered by the officers thereof to the board of county commissioners. The board of county commissioners shall dispose of any assets of such township and shall dispose of the proceeds thereof in the manner hereinafter provided. If any township shall at the time of its disorganization have any outstanding indebtedness, the board of county commissioners shall place any moneys together with the proceeds of any assets of such township into a special fund which shall be used for the purpose of paying such indebtedness. Moneys in excess of that required for the payment of outstanding indebtedness shall be disposed of in like manner as that provided for the disposal of moneys of townships having no outstanding indebtedness at the time of their disorganization. If any township shall at the time of its disorganization have no outstanding indebtedness, the board of county commissioners shall, if all of the territory of such township is attached to a single township, place all moneys and proceeds of assets to the disorganized township into the treasury of the township to which it is attached, or if the territory of such township is attached to two or more townships all moneys and proceeds of assets of the disorganized township shall be disposed of in the manner provided by K.S.A. 80-102.

History: L. 1969, ch. 471, § 4; April 25.

80-1114. Same; outstanding indebtedness; levy of taxes for payment; bonded indebtedness.

If any township disorganized under the provisions of this act shall at the time of such disorganization have any outstanding indebtedness, it shall be the duty of the county commissioners of the county to provide for the payment of all indebtedness other than bonded indebtedness by making a levy of taxes therefor upon all taxable tangible property within the territory comprising such township at the time of its disorganization in an amount which together with any moneys in the special fund created under the

provisions of K.S.A. 80-1113 will be sufficient to pay such indebtedness. The bonded indebtedness of any township at the time of its disorganization under the provisions of this act shall be paid in the manner provided by K.S.A. 10-119.

History: L. 1969, ch. 471, § 5; April 25.

80-1115. Same; adoption of budget and levy of taxes prior to effective date for tax purposes.

Whenever the disorganization of any township shall take effect for the purpose of taxation on the last day of December following such disorganization, the township board of the township to which such territory is attached shall, if the disorganization of such township shall become effective for other than tax purposes prior to the time fixed for the adoption of the budget of such township, adopt a budget and provide for the levy of taxes throughout the area of the township as it will exist on January 1, next following the adoption of such budget.

History: L. 1969, ch. 471, § 6; April 25.

80-1116. Same; right of elector of township being disorganized to vote and become candidate for office in townships to which territory will attach.

Whenever the board of county commissioners of any county shall have adopted a resolution providing for the disorganization of any township under the provisions of this act and attachment of the territory thereof to another township or townships and the time for the filing of a petition in opposition thereto has expired, without the filing of a valid and sufficient petition in opposition thereto, prior to the date fixed by law for the filing of nomination papers by candidates for township offices, or prior to the date fixed for the holding of primary and general elections for the election of township officers, but the effective date for the disorganization of such township and the attachment of the territory thereof to another township shall not become effective until the expiration of the terms of office of the officers holding such offices, any qualified elector residing within the township being disorganized may become a candidate and may be nominated and elected to an office of the township to which the territory in which he or she resides shall be attached and made a part of at the time fixed by law for the taking and holding of such office. Any qualified elector residing within the township being disorganized may vote at such primary or general election for the election of township officers of the township to which the territory in which he or she resides shall be attached and made a part of at the time fixed by law for the taking of office by officers elected at such primary or general election.

History: L. 1969, ch. 471, § 7; April 25.

80-1117. Disorganization and consolidation of townships with no residents; procedure; transfer of assets and debts.

(a) If any township has no residents, as certified by the county clerk of the county in which such township is located, the board of county commissioners, by resolution, shall disorganize the township or consolidate the township with the next geographically closest township, within such county, having a functioning township board. Prior to the adoption of such resolution, the board of county commissioners shall conduct a public hearing on the advisability of adopting such resolution. Until such time as the disorganization or consolidation is completed, the board of county commissioners may exercise all of the statutory powers of the township board deemed necessary and advisable by such board of county commissioners.

(b) All books, papers, records, moneys and other assets belonging to any township proposed to be disorganized or consolidated under subsection (a) shall be delivered by the persons in possession thereof to the board of county commissioners. The board of county commissioners may dispose of any assets of such township in the manner provided by this section. If at the time of its disorganization or consolidation, the townships have any outstanding indebtedness, the board of county commissioners shall place any moneys together with the proceeds of any assets of such township into a special fund that shall be used for the purpose of paying such indebtedness. Moneys and assets in excess of that required for the payment of outstanding indebtedness either shall be transferred to the township with which the disorganized township is consolidated or, if the township is disorganized, such moneys shall be credited to the county general fund.

History: L. 2004, ch. 166, § 7; L. 2008, ch. 163, § 34; July 1.

80-1118. Disorganization of certain townships by county commission; attachment of territory to other township; procedure, hearing, protest petition; election.

From and after July 1, 2008: (a) The board of county commissioners may disorganize any township if any of the following apply:

- (1) The number of residents in the township shall become less than 200;
- (2) a vacancy exists in the office of township trustee, clerk or treasurer for two consecutive years; or
- (3) the township fails to file an annual budget for two consecutive years.

The territory of any township disorganized under this section shall be attached to one or more townships which are contiguous to such township.

(b) The board of county commissioners desiring to disorganize a township under this section shall adopt a resolution stating the county is considering the disorganization of such township. The resolution shall:

(1) Give notice that a public hearing will be held to consider the disorganization and fix the date, hour and place of the public hearing. Unless the board determines adequate facilities are not available, the public hearing shall be held at a site located within such township. The site and time of the hearing shall be held at a location and time determined to be the most convenient for the greatest number of interested persons.

(2) A copy of the resolution providing for the public hearing shall be published in a newspaper of general circulation of the township.

(c) Following the public hearing the board may pass a resolution disorganizing the township and attaching the territory to one or more adjacent townships. The resolution shall be published once each week for two consecutive weeks in a newspaper of general circulation of the township. The resolution shall take effect 60 days after the final publication unless a petition signed by electors of such township equal in number to at least 10% of the electors who voted at the last general election is presented to the county clerk calling for an election on the issue. Such proposition may be submitted at the next general election held in such townships or at special elections called for that purpose by the board of county commissioners, and shall be submitted on a separate ballot in substantially the following form:

Proposition to consolidate _____ township

(name of township)

with _____ township(s).

(name of township or townships)

Yes No

If a majority of the votes cast in such township in such election shall be in the affirmative, it shall be the duty of the board of county commissioners of such county to disorganize such township and attach the territory to such other township or townships. The expenses of such election shall be paid by the county from the county general fund.

History: L. 2008, ch. 163, § 26; May 29.

**KSA CHAPTER 82a.—WATERS AND WATERCOURSES ARTICLE
3.—OBSTRUCTIONS IN STREAMS**

82a-301. Permit or consent of chief engineer required to construct, modify or add to dams or other water obstructions; exceptions; definitions.

(a) (1) Except as provided in subsections (c) and (d), without the prior written consent or permit of the chief engineer of the division of water resources of the Kansas department of agriculture, it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to:

- (A) Construct, modify or add to any dam;
- (B) construct, modify or add to any water obstruction in a designated stream; or
- (C) change or diminish the course, current, or cross section of any designated stream within this state.

(2) Any application for any permit or consent shall be made in writing in such form as specified by the chief engineer.

(3) Revetments for the purpose of stabilizing a caving bank which are properly placed shall not be construed as obstructions for the purposes of this section.

(b) As used in K.S.A. 82a-301 et seq., and amendments thereto:

(1) "Dam" means any artificial barrier including appurtenant works with the ability to impound water, waste water or other liquids that has a height of 25 feet or more; or has a height of six feet or greater and a storage volume at the top of the emergency spillway elevation of 50 or more acre feet. The height of a dam or barrier shall be measured from the lowest elevation of the streambed, downstream toe or outside limit of the dam to the elevation of the top of the dam.

(2) "Designated stream" means a natural or man-made channel that conveys drainage or runoff from a watershed having an area of:

(A) One or more square miles in zone one, which includes all geographic points located in or east of Washington, Clay, Dickinson, Marion, Harvey, Sedgwick or Sumner counties;

(B) two or more square miles in zone two, which includes all geographic points located west of zone one and in or east of Smith, Osborne, Russell, Barton, Stafford, Pratt or Barber counties; or

(C) three or more square miles in zone three, which includes all geographic points located west of zone two.

(c) (1) The prior written consent or permit of the chief engineer shall not apply to water obstructions that meet the following requirements:

(A) The change in the cross section of a designated stream is obstructed less than 5% and the water obstruction or change is contained within a land area measuring 25 feet or less along the stream length; or

(B) (i) the water obstruction is not a dam as defined in subsection (b);

(ii) the water obstruction is not located within an incorporated area;

(iii) every part of the water obstruction, and any water impounded by such obstruction, is located more than 300 feet from any property boundary; and

(iv) the watershed area above the water obstruction is five square miles or less.

(2) If the water obstruction does not meet the requirements of subsection (c)(1)(B)(iii), but meets all other requirements of subsection (c)(1)(B), such water obstruction may be exempted from the permitting requirements of subsection (a) if the chief engineer determines such water obstruction has minimal impact upon safety and property based upon a review of the information, to be provided by the owner, including:

(A) An aerial photo or topographic map depicting the location of the proposed project, the location of the stream, the layout of the water obstruction, the property lines and names and addresses of adjoining property owners; and

(B) the principal dimensions of the project including, but not limited to, the height above streambed.

(3) Notwithstanding any other provision of this section, the chief engineer may require a permit for any water obstruction described in this subsection if the chief engineer determines such permit is necessary for the protection of life or property.

(d) The prior written consent or permit of the chief engineer shall not be required for construction or modification of a hazard class A dam that:

(1) Has a height of less than 30 feet and a storage volume at the top of the emergency spillway elevation of less than 125 acre feet, and the dam location and dimensions have been registered with the division of water resources in a written form prescribed by the chief engineer; or

(2) is a wastewater storage structure for a confined feeding facility that has been approved by the secretary of health and environment pursuant to K.S.A. 65-171d, and amendments thereto.

History: L. 1929, ch. 203, § 1; L. 1978, ch. 431, § 6; L. 2002, ch. 138, § 2; L. 2011, ch. 67, § 1; L. 2013, ch. 111, § 4; July 1.

82a-301a. Exclusive regulation and supervision of dams and other water obstructions by chief engineer.

It is the intent of the legislature by this act to provide for the exclusive regulation of construction, operation and maintenance of all dams or other water obstructions by the state to the extent required for the protection of public safety. All dams or other water obstructions are declared to be under the jurisdiction of the division of water resources of the Kansas department of agriculture and the chief engineer thereof. The chief engineer or his or her authorized representative shall supervise the construction, modification, operation and maintenance of dams or other water obstructions for the protection of life and property.

History: L. 1978, ch. 431, § 1; L. 2004, ch. 101, § 135; July 1.

82a-302. Applications for consent or permit, fees; contents; rules and regulations; permit fees.

(a) Except as otherwise provided for general permits, each application for the consent or permit required by K.S.A. 82a-301, and amendments thereto, shall be accompanied by complete maps, plans, profiles and specifications of such construction, modification or addition proposed to be made, the required application fee as provided in subsection (b) unless otherwise exempted, and such other data and information as the chief engineer may require. The chief engineer shall adopt rules and regulations for the issuance of a general permit which may be issued for projects which require limited supervision and review.

(b) (1) The application fee for a permit to construct, modify or add to a dam shall be \$200.

(2) The application fee for a permit to construct, modify, or add to a water obstruction or to change or diminish the course, current or cross section of a stream shall be based on the watershed area.

Watershed Area Above the Project Permit Application Fee

Less than 5 square miles \$100

Between 5 and 50 square miles \$200

More than 50 square miles \$500

(3) The application fee for a general permit shall be \$100.

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 2014 Supp. 82a-328, and amendments thereto.

History: L. 1929, ch. 203, § 2; L. 1978, ch. 431, § 7; L. 2002, ch. 138, § 3; L. 2010, ch. 17, § 211; L. 2013, ch. 111, § 5; July 1.

82a-303. Same; conditions to permits; unlawful acts.

The chief engineer of the division of water resources shall have power to grant or withhold such consent or permit or may incorporate in and make a part of said consent or permit such terms, conditions and restrictions as may be deemed by him or her advisable. It shall be unlawful to: (a) Construct or begin the construction of any dam or other water obstruction, or (b) make or begin any change or addition in any dam or other water obstruction, except in accordance with the terms, conditions and restrictions of such consent or permit, and such rules and regulations as may be adopted by the chief engineer of the division of water resources.

History: L. 1929, ch. 203, § 3; L. 1978, ch. 431, § 8; April 11

82a-303a. Rules and regulations by chief engineer.

The chief engineer of the division of water resources of the Kansas department of agriculture shall adopt and may from time to time amend rules and regulations in order to establish standards for the construction, modification, operation and maintenance of dams and other water obstructions and to administer and enforce the provisions of this act.

History: L. 1978, ch. 431, § 2; L. 2004, ch. 101, § 136; July 1.

82a-305a. Unlawful acts; penalties; injunction.

(a) Any person, partnership, association, corporation or agency or political subdivision of the state government who violates any provision of this act or of any rule and regulation or order issued pursuant thereto shall be deemed guilty of a class C misdemeanor. Each day that any such violation occurs after notice of the original violation is served upon the violator by the chief engineer by restricted mail shall constitute a separate offense.

(b) Upon request of the chief engineer, the attorney general shall bring suit in the name of the state of Kansas in any court of competent jurisdiction to enjoin (1) the unlawful construction, modification, operation or maintenance of any dam or other water obstruction, or (2) the unlawful change or diminution of the course, current or cross section of a river or stream. Such court may require the removal or modification of any such dam or other water obstruction by mandatory injunction.

History: L. 1978, ch. 431, § 5; April 11.

Appendix A – Township Duties from Kansas Advisory Council on Intergovernmental Relations

The following information was obtained from: KANSAS ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS TOWNSHIP STUDY PHASE I AND II FACT-FINDING SEPTEMBER 7, 2007

Township KSA Summary

This report attempts to answer the Township Study Questions: “What do the statutes require the townships to do?” and “What do the statutes authorize/allow the townships to do?”

Introduction

In “Kansas Township Government in the 1970s,” Fisher and West observed that “townships, like cities and counties, are legal creatures of the state, whose powers and privileges are subject to the will of the legislature.” (Glenn W. Fisher and Lynne Daggett West, “Kansas Government in the 1970s,” 1978, p. 40). This is certainly observable with Kansas townships. While they currently retain authority to perform various municipal functions, they have been mostly relieved of responsibility, over the past several decades, for the few governmental functions in which they were formerly involved (e.g., law enforcement, property assessment). As Fisher/West observed, this may be part of the reason for the decline in the activity level of many Kansas townships. The distinction between governmental functions as opposed to municipal functions may also be important in looking at what is required versus what is authorized/allowed in terms of township functions.

While governmental functions, on the one hand, have been generally understood to be those “exercised by local governments as agents of the state, at the direction of the state ... involve the general welfare, [and] ... are intended to be uniform ...” (Id.), municipal functions on the other hand “have been defined as those which: ‘specifically and peculiarly promote the comfort, convenience, safety and happiness of the citizens of the municipality rather than the welfare of the general public ... ’” (Id., citing *Chardkoff Junk Co. v. City of Tampa*, 102 Fla. 501, 135 So. 457, 459). They have been referred to as “service” or “optional” functions, and their provision may vary according to local needs and customs. (Id. at p. 41).

What follows is a summary of the main statutes pertaining to townships which on their face either require or authorize/allow townships and/or township officers to do various things. It should be noted that in order to gain a full understanding of what is legally required of townships, as compared to what is simply legally authorized or allowed for them to do, some additional research into current Kansas case law and Attorney General opinions, at a minimum, interpreting the current statutes should be undertaken by a qualified legal intern or attorney.

Summary

Following is a brief outline of the functions and services townships are required or authorized to provide, along with a listing of the KSA’s cited in each section. Also provided is a summary of administrative requirements.

Summary of Required Services and Activities

- Road Maintenance (KSA 68-523 - 526, 68-530, 68-538, 68-539; 68-117a)
- Noxious Weed Control (KSA 2-1314, 2-1318)
- Care of Abandoned Cemeteries (KSA 80-916)
- Issuance of Bonds and Levying of Taxes (Required: KSA 2-1318, 68-131, 80-903, 80-907)

- Designation of Depositories (KSA 9-1401, 9-1402, 9-1405)
- Elections of Township Officers (KSA 25-203, 25-1601)
- Permanent Registration of Township Vehicles (8-1,134)

Summary of Authorized or Allowed Functions and Activities

- Issuance of Bonds and Levying of Taxes (Authorized: KSA 12-1,101, 12-11a-07,10-201, 10-202, 68-518c, 12-1221, 80-902, 80-906, 80-937, 65-6113, 80-1903, 80-1919, 80-104, 80-107, 80-113, 80-114, 80-115, 80-1806, 80-2002, 80-2201, 80-2204)
- Investment of Idle Funds (KSA 12-1675)
- Hiring outside auditors (KSA 75-1125)
- Interlocal agreements (KSA 12-2901 – 12-2910)
- Consolidation, Reorganization, Disorganization; Transfer of Powers to Board of County Commissioners (KSA 80-1101 – 80-1117; 80-120)
- Cemeteries & Parks, Cemetery Districts, Cemetery Corporations (KSA 80-901 et seq., 15-1013 et seq., 17-1342 et seq.)
- Drainage & Levees (KSA 24-201 et seq., 24-701 et seq.)
- Fire Protection, Fire Districts (KSA 80-1501 et seq., KSA 12-3910)
- Emergency Medical Services, Ambulance (KSA 65-6113)
- Law Enforcement (KSA 12-11a-06)
- Libraries, Library Districts (KSA 12-1218 et seq., 12-1236)
- Licensing (KSA 80-1302)
- Prairie Dog, Mole & Gopher Eradication (KSA 80-1201 et seq.)
- Refuse Collection & Disposal (KSA 80-2201 et seq.)
- Roads (KSA 68-141g, 80-306, 80-307)
- Sewage Districts (KSA 80-2002)
- Sidewalk Construction (KSA 68-131)
- Township Halls (KSA 80-104, 80-107)

Summary of Additional Administrative Requirements

- Comply with Cash Basis Law (KSA 10-1101 et seq.)
- Comply with Budget Law (KSA 79-2925 – 79-2937)
- Comply with uniform procedure for accounting, payment and reporting; GAAP; fund accounting (KSA 12-105a, 75-1120, 1120a)
- Submit to annual audits (unless exemption granted by director of accounts and reports) (KSA 75-1122)
- Submit budget and other reports timely and as required by statutes; hold meetings of various boards as required by statutes (numerous statutes –see section)
- Immediately deposit all funds received in designated depositories with proper security (KSA 12-1675, 80-404)
- Submit any interlocal agreements to AG for approval (KSA 12-2904)
- Comply with Open Meetings Act (KSA 75-4317, 75-4318)
- Township officials must live within the township, road overseers must live within the road district (KSA 80-202)
- When elected, officers must take the oath of office and file it with the county clerk within 20 days (KSA 80-202)
- File election campaign reports if expenditures/contributions exceed \$500 (KSA 25-904)
- Township officials are to receive compensation and reimbursement for expenses (numerous statutes – see section)
- Permanently register all township vehicles (KSA 8-1,134)

Detail of Required Services and Activities

The vast majority of statutes addressing township functions authorize certain services to be performed by the townships, and authorize them to issue bonds and levy taxes to support those functions. Several statutes require certain administrative, accounting, recordkeeping and reporting systems be followed in carrying out these functions. There are, however, some statutes which do require action on the part of townships, or at least imply that action is required. These are listed here first. The most detailed of these statutes refer to what seems to be the townships' main functions today, those of road maintenance and noxious weed control.

Road Maintenance

KSA 68-526 states that in non-county-unit counties, the township boards "shall have the general charge and supervision of all township roads and township culverts in their respective townships. The board shall procure machinery, implements, tools, drain tile, stone, gravel and any other material or equipment required, for the construction or repair of such roads and culverts. All work shall be done in accordance with plans and specifications and the general regulations to be prepared and furnished by the county engineer." It is important to note that there is a fair amount of oversight by the county engineer in road matters, as references to the approval of or provision of guidance by that office appear throughout this chapter.

The wording of 68-526 at least implies that road maintenance is a required township function for those counties on the township-unit road system and there are several specific duties delineated in the statutes. For example, the township trustee, clerk and treasurer "shall constitute" the board of highway commissioners (68-523), and they "shall hold regular meetings" (quarterly-months are specified) (68-524), "shall keep an accurate record of all official acts..." (68-525), and "shall receive compensation" for their services in this capacity (68-525). They also "shall appoint, on merits only..." a road overseer,

with the approval of the county engineer (68-530) who may or may not have assistants. The road overseer is further required to submit itemized monthly reports of all labor and materials used to the township board (68-538); the township clerk, in turn, is required to submit an annual report to the county engineer of all road work done (68-539). For larger townships, KSA 68-117a requires that townships with populations of 10,000 or more, which are outside the limits of any city or town, needing to improve roads do so by petition to the board of county commissioners, by at least 50% of landowners of the property abutting the proposed improvement, and requires owner(s) to post bond.

Noxious Weed Control

KSA 2-1314 requires townships to control noxious weeds -- "It shall be the duty of ... the township boards ... to control the spread of and to eradicate all weeds declared by legislative action to be noxious on all lands owned or supervised by them ...". The duty is imposed upon whoever or whatever entity is in control of the land so infested, so in the case of land under the control of a township, it would be required to perform this function. KSA 2-1318 also requires the township to levy a tax for this purpose based on information received from the county weed supervisor.

Care of Abandoned Cemeteries

KSA 80-916 requires townships to care for abandoned cemeteries, and cut weeds and grass in them at least twice a year. A spending restriction is imposed by the statute: "...such township board shall appropriate and expend not more than \$500 per year for each such cemetery."

Issuance of Bonds and Levying of Taxes

In some instances the language of the statutes require townships to issue bonds and/or levy taxes in support of services provided by the township, particularly services that are required of the township, such as those just discussed. Some examples of required tax levies or bond issues are:

KSA 2-1318 (townships shall levy taxes for control of noxious weeds)

KSA 68-131 (townships shall levy a tax to pay for sidewalks when sidewalk construction is approved by residents)

KSA 80-903, 80-907 (townships shall levy a tax to pay interest on bonds issued under KSA 80-902 & 80-906 for acquisition of parks and cemeteries)

Miscellaneous

KSA 8-1,134 requires all township vehicles to be permanently registered, and requires townships to make an annual report to the division of vehicles identifying such vehicles.

KSA 9-1401 requires township boards to designate depositories, within the same county as the township as long as adequate security can be obtained, in which to deposit all funds coming into township possession. There are specific requirements as to securities for public funds as well. (9-1402, 9-1405)

KSA 25-203 requires primary elections, including township elections, be held on the first Tuesday of August in even numbered years. KSA 25-1601 requires general elections, including township general elections, be held on the Tuesday following the first Monday in November, in even numbered years.

Detail of Authorized or Allowed Functions and Activities

In addition to the above requirements, there are many others which townships are authorized to carry out.

Issuance of Bonds and Levying of Taxes

KSA 12-1,101 (townships may levy a gross earnings tax)

KSA 12-11a-07 (townships may levy a tax for law enforcement created under 12-11a-06)

KSA 10-201, 10-202 (townships may issue bonds to build, purchase or repair bridges);

KSA 68-518c (townships may levy an annual tax for road purposes)

KSA 12-1221 (townships may issue bonds to buy land for a library site, and/or erect and equip a library building)

KSA 80-902, 80-906 (townships may issue bonds to pay for acquisition of parks and cemeteries);

KSA 80-937 (certain townships may issue bonds for restoration of township lake)

KSA 65-6113 (townships may levy taxes to pay for the establishment, operation and maintenance of emergency medical and/or ambulance services)

KSA 80-1903 (townships may levy tax to pay for fire and rescue);

KSA 80-1909 (townships may issue bonds to pay for purchase of land/buildings, construction of buildings, purchase of equipment, for fire/rescue-with voter approval);

KSA 80-104 (authorizes townships to issue bonds for township land, buildings);

KSA 80-107 (two adjoining townships within the same county may issue joint bonds for construction of a joint township hall);

KSA 80-113 (townships may issue bonds for reconstruction/repair of township buildings and for equipment);

KSA 80-114 (townships may issue bonds for repair/remodel of condemned township hall, not to exceed \$6,000, without election -- unless protested by 30% of voters, in which case an election is required);

KSA 80-115 (townships may levy annual tax for special fund for acquiring, repairing, equipping and maintaining township hall)

KSA 80-1806 (urban class townships may levy taxes to pay township's share of registration and election expenses to reimburse the county)

KSA 80-2002 (sewage districts established by townships with public water supply may levy taxes and special assessments and issue bonds)

KSA 80-2201, 80-2204 (certain townships may levy taxes and/or issue bonds to pay for land or equipment for disposal of trash)

Administrative Matters

KSA 12-1675 authorizes townships to invest public funds which are “not immediately required for the purposes for which the moneys were collected or received” (“idle funds”), but places restrictions on types of investment vehicles which may be used and requires that all such funds be secured.

KSA 75-1125 authorizes any township not required to have an annual audit to hire licensed municipal public accountants or CPAs to conduct an audit, and imposes a duty upon the township to do so upon petition of at least 20% of the voters.

Townships may form interlocal agreements under the Interlocal Cooperation Act (KSA 12-2901 - 12-2910). If such agreements are formed, there are certain required components to the agreements, and any such agreements are required to be approved by the Attorney General.

Township boards, their boards of county commissioners, and/or their residents may take various actions to begin the process of consolidation, reorganization, or disorganization. These provisions are found in KSA 80-1101 – 80-1117. Some of note:

- Townships with populations of less than 200 may be disorganized by their county board of commissioners unless opposed by a majority of voters (80-1101);
- Townships in counties with populations of less than 3000 with no township indebtedness may be abolished and new townships created (80-1105);
- Two or more townships within the same state representative district may consolidate (80-1109);
- Townships in counties on the county-unit road system may be disorganized (80-1110, 80-1111);
- For townships with no residents, the board of county commissioners may either disorganize the township or consolidate it with the geographically closest functioning township within the same county (80-1117).

In addition, KSA 80-120 authorizes township boards to adopt a resolution proposing to transfer “all powers, duties and functions of the township board” to the board of county commissioners (BOCC). The resolution must then be submitted to the voters for approval, and if approved the BOCC takes over the township’s functions. There is also a provision for return of powers to the township if petitioned and subsequently approved by the voters.

Cemeteries and Parks

KSA 80-901 authorizes townships to acquire parks and cemeteries (as restricted by 80-904); two or more townships may join to acquire parks and cemeteries (80-905, as restricted by 80-906).

Cemetery Districts may be formed pursuant to certain conditions (15-1013 et seq.), and Cemetery Corporations may be formed under certain conditions (17-1342 et seq.)

Drainage and Levees

KSA 24-201 et seq. authorizes the township trustee to determine the need for construction of “ditches, drains and watercourses” and to cause them to be constructed. KSA 24-701 et seq. provides a mechanism for petition to court to allow construction on private land.

Fire Protection, Fire Districts

KSA 80-1501 et seq. authorizes townships and counties to join with another municipality in the maintenance of a fire department (statute sets out specifics regarding these types of agreements); employees may be compensated or volunteer; special clothing and equipment, as well as insurance may be provided; the governing body of a fire department created hereunder “may reorganize itself into a consolidated fire district” under KSA 12-3910.

KSA 80-1512 authorizes the creation of fire districts by townships with populations of 10,000 or more, outside the limits of an incorporated city. KSA 80-1514a creates some specific authorizations for fire districts created under 80-1512, such as acquisition of real and personal property (land, buildings, equipment), issuance of bonds, payment of employees, and exercise of eminent domain, just to name a few.

KSA 80-1540 authorizes the creation of fire districts, not only by single townships, but also by joining more than one township. The fire district may include all or part of the participating townships, and the formation of it must be approved by the voters. The governing body of the fire district is to be comprised of the township boards of the participating townships if there are four or less, or by an agreed upon number of representative(s) from the boards of each township if more than four (KSA 80-1542).

KSA 80-1541 enumerates similar powers for these types of fire districts as those set out in 80-1514a for districts created under 80-1512.

KSA 80-1544 authorizes compensation and furnishing of benefits, quarters, clothing and special equipment to employees. It also requires the auditing board to meet once a month to examine all claims, and to file an annual report with the county clerk for approval by the board of county commissioners by January 31 each year. The auditing board is to be compensated for their services.

Emergency Medical Services, Ambulance

KSA 65-6113 authorizes townships (“any municipality”) to establish, operate and maintain an emergency medical or ambulance service, and to contract for the service.

Law Enforcement

KSA 12-11a-06 authorizes certain townships and third class cities to share law enforcement departments.

Libraries, Library Districts

KSA 12-1218 et seq., 12-1236 authorizes acquisition of site for and building of library, maintenance, equipment; 12-1236 authorizes creation of library districts.

Licensing

KSA 80-1302 authorizes townships to issue licenses for pool/billiard halls, bowling alleys, roller skating rinks and dance halls.

Prairie Dog, Mole and Gopher Eradication

KSA 80-1201 et seq. authorizes townships to purchase material and employ persons to eradicate prairie dogs, moles and gophers.

Refuse Collection and Disposal

KSA 80-2201 et seq. authorizes certain townships to acquire land and equipment for disposal of trash.

Roads

KSA 68-141g authorizes the transfer of money from the road fund to a “special machinery” fund, subject to some restrictions.

KSA 80-306 authorizes township trustee to prosecute all “road laws,” and requires the county attorney to act on behalf of the township.

KSA 80-307 authorizes the trustee to remove obstructions from roadways if road overseer fails to do so, and to “call out the inhabitants” to assist in doing so.

Sewage Districts

KSA 80-2002 authorizes townships with public water supply to establish sewage districts.

Sidewalk Construction

KSA 68-131 authorizes townships to construct sidewalks upon petition of at least 51% of residents whose property abuts property where sidewalk would go.

Township Hall

KSA 80-104 authorizes township boards to acquire land for the township and erect buildings on it.

KSA 80-107 authorizes two neighboring townships to build a joint township hall with voter approval.

Detail of Additional Administrative Requirements

Within and relating to all of these required and authorized functions, there are certain administrative, recordkeeping and reporting requirements.

Open Meetings Act

KSA 75-4317, 75-4318 – As taxing subdivisions of the State, townships would be required to comply with the Open Meetings Act.

Bonds and Taxes

KSA 10-105 requires that any bonds which are issued by a township must be signed by the trustee, attested by the township clerk and countersigned by the township treasurer.

KSA 79-1801 requires townships to certify to their county clerks by August 25 of each year the amount of ad valorem tax to be levied (this is part of the budget submittal).

Accounting, Auditing, Budgeting, Reporting

KSA 10-1101, et seq. – known as the Cash Basis Law – “prohibits townships (or any other governmental unit) from creating any financial indebtedness unless the money is actually on hand, in the appropriate fund, and unencumbered by any prior commitments.” (Melody L.G. Rebenstorf, “Kansas Township Handbook,” 1995, p. 23) Several exceptions to this exist in the statutes, e.g., obligations for which money has been identified by bonds or no fund warrants (KSA 10-1116).

KSA 12-105a establishes a “uniform procedure for payment of claims and other indebtedness by municipalities” – most of the language in this act is mandatory.

KSA 75-1120 establishes a uniform system of procedures, accounting and reporting for all municipalities in the state, including a requirement for an annual audit of certain municipalities;

KSA 75-1120a requires compliance with generally accepted accounting principles (GAAP).

KSA 75-1122 defines which municipalities are required to have annual audits (gross receipts or outstanding bonds in excess of \$275k) – however, it also allows townships to be exempted from the annual audit requirement each year if their board passes a resolution requesting the exemption – the language is mandatory: “Upon receipt of the resolution, the director of accounts and reports shall waive the requirement for an audit for such year.”

KSA 79-2925 – 79-2937 – known as the Budget Law – “requires Kansas townships (as well as other municipalities or taxing units of the government) to prepare an annual budget, and prohibits non-budgeted spending.” (Rebenstorf, p. 24) This act creates the balanced budget requirement. KSA 79-2927 requires the township boards to meet no later than August 1 of each year to prepare their budgets (also contains other specifics about budget itself); KSA 79-2929 requires a public hearing on the budget, and KSA 79-2929a requires a public hearing on amended budgets. KSA 79-2934 requires the townships to adhere to fund accounting principles – funds budgeted for and allocated to one purpose may not be used for another. Each fund stands alone as its own appropriation.

KSA 80-302 designates township trustee, clerk and treasurer as the township auditing board, and requires them to meet quarterly to audit all claims; it also requires them to file their annual report with the county clerk for approval by the board of county commissioners by January 31 of each year.

KSA 80-304 requires the township trustee to provide a detailed annual report of items audited and allowed to the board of county commissioners for examination, approval and filing with the county clerk.

KSA 80-402 requires the township treasurer to keep records of receipts and disbursements by fund, and to present them together with the vouchers to the township auditing board at their October meeting; a verified copy of this report shall be filed with the county clerk.

KSA 80-405 also requires the treasurer to keep a record of receipts and disbursements, and to present an itemized statement of same to the township board at their October meeting; this report is to be examined and given to the township trustee.

KSA 80-406 requires the township trustee to make a verified statement of all bills allowed by the township each year, ending with the October meeting, and keep on file in his/her office.

KSA 80-407 requires the treasurer’s statement per KSA 80-405 and the trustee’s statement per KSA 80-406 to be posted at the polling place at the time of election of township officials.

KSA 80-410 requires the township treasurer to file a detailed financial statement with the county clerk by January 31 each year; if the budget exceeds \$25,000, s/he must also publish a summary with notice that the detailed statement is available at the county clerk’s office; s/he is also required to file a detailed statement of money paid to each member of the township board.

KSA 80-502 requires the clerk to immediately record in the township’s records and publish by posting at the usual place of holding elections a certified copy of the trustee’s annual report.

Deposit and Investment of Public Funds

KSA 12-1675 allows the investment of “idle funds,” and specifies what types of investment vehicles may be used for public moneys.

KSA 80-404 requires the township treasurer to deposit all public money he/she receives in a qualified depository (as defined here) as specified by the township board; idle funds may be invested.

Elections

KSA 25-904 requires candidates for township offices to file campaign expense reports with the county election commissioner, if their expected contributions or campaign spending will exceed \$500, within 30 days after the election.

Fire Districts

KSA 80-1514 designates the township board as the governing body of the fire district, except if “a major portion” of it lies within a city or cities and all of the territory is in one county commissioner district. In that case, the board is to be comprised of three members appointed by the county commissioner.

KSA 80-1544 requires the auditing board for the fire district to meet once a month to audit claims, and to file their annual report with the county clerk for approval by the board of county commissioners by January 31.

Interlocal Agreements

KSA 12-2904 specifies what must be included in any interlocal agreement which may be entered into by townships, and requires that all such agreements be submitted to the Attorney General for approval.

Roads

KSA 68-524 requires the township board of highway commissioners to meet quarterly, and 68-525 requires them to keep records of their “official acts.”

KSA 68-538 requires the road overseer to submit an itemized monthly report of all labor and materials used to the township board.

KSA 68-539 requires the township clerk to submit an annual report of all road maintenance expenses to the county engineer.

Cemeteries and Parks

KSA 80-913 requires townships having authority for maintenance of parks and/or cemeteries, and which have issued bonds for this purpose, to make an annual report of the condition of such parks and cemeteries and of the related expenditures/receipts.

Prairie Dogs

KSA 80-1203 requires townships engaged in prairie dog eradication to appear before the board of county commissioners in August and give an estimate of the expenses required.

Township Officials

KSA 80-202 requires township officers to live within the township, road overseers to live within the road district; when elected, officers must take the oath of office and file it with the county clerk within 20 days.

Various statutes require that township officials be paid for their services in connection with township business, for example: KSA 68-525 (township highway board shall be compensated); KSA 68-530, 68-531 (authorizes/requires compensation for road overseer and assistants); KSA 80-207 (township officers and members of the board shall be compensated and shall receive reimbursement for expenses); KSA 80-302 (auditing board shall be compensated); KSA 80-1204 (trustee and assistants shall be compensated for prairie dog eradication); KSA 80-1407 (township board members shall receive compensation for services in connection with supervision of a township water system); KSA 80-1514 (governing body of fire district is not to be compensated but is to receive reimbursement for expenses); KSA 80-1544 (governing body of fire district shall be compensated); KSA 80-2002 (governing board of sewage district shall be compensated). In most instances, the amount of compensation is to be set by the township board. In looking at these statutes, it is worth noting that very often the same people who comprise the township board (clerk, treasurer and trustee – see, e.g., KSA 80-505, 80-1525) also comprise these various specific boards and governing bodies -- per the language of the statutes in many cases (see, e.g., KSA 68-523, 80-302).

Vehicles

KSA 8-1,134 requires each township to file an annual report with the division of vehicles identifying each vehicle owned by the township.

Appendix B – Kansas Open Meeting Act

Kansas Open Meetings Act (KOMA) Michael J. Smith, Assistant Attorney General Revision date: August 2009

I. PURPOSE AND CONSTRUCTION

- A. It is the public policy of Kansas that meetings be open to the public because "a representative government is dependent upon an informed electorate. . . ." K.S.A. 2008 Supp. 75-4317.
- B. The act is interpreted liberally and exceptions narrowly construed to carry out the purpose of the law. [*Murray v. Palmgren*, 231 Kan. 524, 530 (1982); and *Memorial Hospital Ass'n, Inc. v. Knutson*, 239 Kan. 663, 669 (1986)].

II. BODIES SUBJECT TO THE KOMA

- A. Is the group subject to the KOMA?--two concurrent requirements: K.S.A. 2008 Supp. 75-4318.
 - 1. All legislative and administrative bodies, state agencies, and political and taxing subdivisions.
 - 2. Which receive or expend and are supported in whole or in part by public funds.
- B. Specific Bodies Subject to the KOMA:
 - 1. Political and Taxing Subdivisions include: cities, counties, townships (AG Opin. No. 81-288); school districts, community colleges (AG Opin. No. 81-258); watershed districts (AG Opin. No. 85-161); rural water districts (AG Opin. No. 88-97 and 89-92); drainage districts (AG Opin. No. 90-69); local historic preservation committees administering K.S.A. 75-2724 (AG Opin. No. 99-22).
 - 2. State Agencies and Boards, unless otherwise provided by statute. (AG Opin. No. 86-176).
- C. Subordinate Groups Subject to the KOMA--All subordinate groups, such as boards, commissions, authorities, councils, committees, subcommittees are covered by act if:
 - 1. The subordinate group meets funding test if the parent or controlling body meets funding test, [*State ex rel., Murray v. Palmgren*, 231 Kan. 524 (1982)], and
 - 2. Appointed by parent body to weigh options, discuss options, present recommendations or a plan of action.
 - a. It is the nature of the group, not its designation, which determines if it is subject to the KOMA. (AG Opin. No. 86-92. *See also* AG Opins. No. 80-201; 77-53; 76-140; 76-122; 73-235; 86-38).
 - 3. Examples--School District Advisory Board (AG Opin. No. 84-81); Fire District Advisory Board (AG Opin. No. 86-84); Mayor's commission subject to KOMA as it is subordinate to the city's governing body (AG

Opin. No. 88-25); appointed grievance committees, created by a city to hear employee grievances (AG Opin. No. 91-31); DUR Board under SRS (AG Opin. No. 93-41); Parental boards under Rec. Commission (AG Opin. No. 93-73); House and senate conference committees (AG Opin. No. 93-113).

- D. Joint boards subject to the KOMA if boards composed of members of different governmental bodies and:
1. Appointed by official action (AG Opin. No. 86-48); or
 2. A majority of a quorum of one or more governing bodies is present (AG Opin. No. 84-103. *See also* AG Opin. No. 91-150).
- E. Non-profit corporations may be subject to the KOMA if the non-profit:
1. Receives or expends public funds;
 2. Is subject to control of governmental unit(s); and
 3. Acts as a governmental agency in providing services or has independent authority to make governmental decisions
 - a. Nonprofit Corps Subject to KOMA: Area agencies on aging (AG Opin. No. 79-219); Economic Opportunity Foundation, Inc. (AG Opin. No. 84-10); McPherson Co. Diversified Services, Inc. (AG Opin. No. 79-284); Three Rivers, Inc. (AG Opin. No. 87-143); Cowley County Diversified Services (AG Opin. No. 87-188); HELP, Inc. (AG Opin. No. 88-27); Southwest Developmental Services, Inc. (AG Opin. No. 94-111)
 - b. Not subject to KOMA: Private nursing homes (AG Opin. No. 79-221); KU and WSU Endowment Associations (AG Opins. No. 80-239, 82-172); Planned Parenthood (AG Opin. No. 81-253); Hutchinson Cosmosphere (AG Opin. No. 82-256); Electric Cooperative (AG Opin. No. 85-175); *Memorial Hospital v. Knutson*, 239 Kan. 663 (1986); Parsons Chamber of Commerce (AG Opin. No. 89-149); K-10 Corridor Development, Inc. (AG Opin. No. 94-42); Koch Commission (AG Opin. No. 94-55); Kansas Venture Capital, Inc. (AG Opin. No. 94-107); Mid-America Commercialization, Inc. (AG Opin. No. 94-99); Consensus Estimating Group -- with staff from state agencies (AG Opin. No. 94-93); Prairie Village Economic Development Commission (AG Opin. No. 99-64), Hesston Area Senior Center (AG Opin. No. 01-02); Sheltered Living, Inc. (AG Opin. No. 2004-34); KSU Student Senate (AG Opin. 77-174)
- F. Bodies and meetings not subject to KOMA:
1. Staff meetings
 2. Judicial agencies and bodies (AG Opin. No. 82-254)
 3. Bodies exercising quasi-judicial functions -- K.S.A. 2008 Supp.75-4318(g)(1).
 - a. Quasi-judicial is defined as "a term applied to the action, discretion, etc. of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings and draw conclusions from them, as a basis for their

official action, and to exercise discretion of a judicial nature." Black's Law Dictionary 1121 (5th ed. 1979).

- b. Example: Zoning boards (AG Opin. No. 78-13), city grievance panels (AG Opin. No. 91-31); hearing panels (AG Opin. 97-40).
 - c. Only quasi-judicial deliberations may be closed--binding action must be in open meeting. (AG Opins. No. 91-31; 84-50; 79-225).
4. Any hearing held pursuant to the Kansas Administrative Procedures Act (K.S.A. 77-501 *et seq.*) are not deemed a meeting as defined in KOMA. K.S.A. 77-523(f) as amended by L. 2009, ch. 109, effective July 1, 2009.
 5. Private Organizations. Example: Private/parochial schools (AG Opin. No. 81-94); Nursing homes (AG Opin. No. 79-221).
 6. Hospital board discussions regarding risk management and peer review laws exempted from open meeting discussion. (AG Opin. No. 89-42).
 7. Meetings of legislature if house or senate rules so provide. K.S.A. 2008 Supp. 75-4318(a).
 8. Precinct committees. (AG Opin. No. 94-157).

III. MEETING--If a body is subject to the KOMA, the KOMA applies only when the body has a meeting as defined by the statutes.

- A. A Meeting is (1) any gathering or assembly, in person or through the use of a telephone or any other medium for interactive communication; (2) by a majority of the membership of an agency or body; (3) for the purpose of discussing the business or affairs of the body or agency. K.S.A. 2008 Supp. 75-4317a.
- B. Gathering or Assembly, in Person or Through the Use of a Telephone or other Medium for Interactive Communication
 1. This portion of the definition was altered slightly in 2008 as part of a compromise between the Kansas Press Association, the League of Kansas Municipalities and the Kansas Association of Counties. According to testimony offered, the above language clarified interactive communication.
 2. Prearrangement was required prior to 1994, and the statute did not mention telephone calls. In *State v. Seward Co.*, 254 Kan. 446 (1994), the Kansas Supreme Court held that phone calls between a majority of a quorum of county commissioners discussing business was not subject to the KOMA because the calls were not prearranged and the members were not in each other's physical presence. The legislature reacted to this case by deleting the requirement of prearrangement and adding to the definition "telephone call or any other means of interactive communication." The 2008 Legislature further amended this phrase as follows: "telephone call or any other means of *medium for* interactive communication."
 3. A public body subject to the KOMA may legally conduct meetings by telephone, if it does so in compliance with all of the requirements of the KOMA. Regardless whether a meeting is to be conducted telephonically, in person, by video-conference, or even through third parties, the requirements of the KOMA remain applicable; (AG Opin. No. 2005-03).

4. Informal discussions before, after, or during recesses of a public meeting are held to be subject to the act. [*Coggins v. Public Employee Relations Board*, 2 Kan. App. 2d 416, 423, *rev. denied* 225 Kan. 843 (1978)].
 5. Title of the gathering--*e.g.* work sessions-- is irrelevant if the three requirements of a meeting are met. (AG Opins. No. 80-197; 90-47).
 6. Serial communications is defined as "interactive communications in a series shall be open if they collectively involve a majority of the membership of the body or agency, share a common topic of discussion concerning the business or affairs of the body or agency, and are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the body or agency." K.S.A. 2008 Supp. 75-4318(f). (For a discussion of the prior language concerning serial meetings, *see* AG Opins. No. 98-26, 98-49. *See also* AG Opin. No. 95-13).
- C. Majority of the Membership of the Body
1. "A majority" means the next whole number greater than one-half the total number of members. (AG Opin. Nos. 83-174; 86-110; 87-45; 87-132; 87-152; 93-140 and 2002-41).
 2. A county commission may by Home Rule powers raise its quorum to a number greater than a majority of its members. [*State ex rel. Stephan v. Board of Sedgwick County Comm'rs*, 244 Kan. 536 (1989)]. Cities also have home rule authority to increase their quorum by charter ordinance. (*See* AG Opins. No. 87-45, 83-74). Bodies without home rule authority cannot alter common law rules determining a quorum and may not alter it without specific authority. [*See also* AG Opins. No. 83-174 (change by Airport Authority not authorized); 93-140 (change by Rec. Comm. not authorized); 96-32 (change by state Dental Board not authorized)].
- D. For the Purpose of Discussing the Business or Affairs of the Body.
1. Binding action or voting is not necessary; discussion is what triggers KOMA. (AG Opin. No. 79-200).
 2. "Meeting" includes all gatherings at all stages of the decision-making process. (*Coggins v. Public Employees Relations Board*, 2 Kan.App.2d at 423).
 3. Social gatherings are not necessarily subject to the KOMA; if there is no discussion of the business of the body, one element of a meeting is "missing."
 4. Retreats and meetings held in private clubs are probably prohibited, especially if site makes it impossible for public to attend without cost. (AG Opins. No. 82-133; 80-148).
 5. Members attending a conference where items of general interest are discussed (such as convention of League of Municipalities) are not in violation of the KOMA, as long as the specific business of a body is not discussed. (AG Opin. No. 82-133).
 6. Marriage between two members of a five member city council of a third class city does not violate the KOMA, but they should not discuss city business outside open meeting. (Discussing the former definition of a meeting which required majority of a quorum AG Opin. No. 87-45).

IV. NOTICE OF MEETINGS--K.S.A. 75-4318

- A. Notice of meetings must be requested before the public body is required to provide it. K.S.A. 2008 Supp. 75-4318
 1. Notice must be given to any person or organization requesting it. (AG Opin. No. 86-133). Residence of the requestor is irrelevant. (AG Opin. No. 81-137).
 2. Notice request expires at the end of fiscal year; request must be renewed. Must first notify of expiration before terminating notice. K.S.A. 2008 Supp. 75-4318(b)(3).
 3. Presiding officer has duty to provide notice, but that duty may be delegated.
- B. Form of Request and Notice
 1. Oral request is valid (but prosecution is difficult if not honored). (AG Opins. No. 81-15; 81-22; 86-133).
 2. Notice given can be written or oral, but must be made individually to the person requesting it. Posting or publication in newspaper is insufficient.
 3. A single notice can suffice for regularly scheduled meetings. Must notify of any special meetings. (AG Opin. No. 83-173).
 4. No fee for notice can be charged. (AG Opins. No. 81-137; 82-141).
 5. Petitions for notice may be submitted by groups of people, but notice need only be provided to one person on the list. K.S.A. 2008 Supp. 75-4318(b)(1). (AG Opin. No. 86-133).
 6. No time limit is imposed for receipt of notice prior to meeting. Notice must be given in a "reasonable time," reasonableness depending on the circumstances. (AG Opin. No. 81-15).
 7. Contrary to popular belief, the KOMA does not require notice of meetings to be published in a paper.
 8. To establish a violation for failure to provide notice of a meeting there must have been a prior request for notice. A pattern of providing courtesy notice does not create a duty to provide it.
 9. A body cannot opt out of KOMA's requirements.
- C. Agendas
 1. The KOMA does not require that an agenda be created.
 - a. If a body chooses to create an agenda, that agenda should include topics planned for discussion. [Stevens v. City of Hutchinson, 11 Kan.App.2d 290, 293 (1986)].
 - b. Agenda may be amended. [U.S.D. 407 v. Fisk, 232 Kan. 820 (1983)].
 2. If agendas exist, copies must be made available to those who request them. The agenda does not have to be mailed out and can simply be provided by placing the agendas in a public place. K.S.A. 20087 Supp. 75-4318(d); (AG Opins. No. 79-218; 81-15; 86-133).
 3. Mandamus was proper remedy for board of county commissioner's alleged violations of Open Meetings Act by failing to include planned discussion topic on agenda for meeting. [Klein v. Johnson County Bd. of County Comm'rs, 77 P.3d 1009 (Kan.App. 2003) (unpublished opinion)].

D. Minutes

1. Except for recording motions for executive session, the KOMA does not require minutes. (Local bylaws, ordinances, or policies may.)

V. OPEN MEETINGS AND EXECUTIVE SESSIONS

A. Open Meetings

1. K.S.A. 2008 Supp. 75-4318 requires open meetings when a body is subject to the act.
 - a. Any person may attend open meetings. (AG Opin. No. 80-43).
 - b. The KOMA does not require that the public be allowed to speak or to have an item placed on the agenda (but check local ordinances and policies. K.S.A. 21-4101 prohibits disorderly conduct or disturbing a lawful meeting and provides for criminal prosecution).
2. Secret ballots not allowed, K.S.A. 2008 Supp. 75-4318(a). The public must be able to ascertain how each member voted. (AG Opins. No. 86-176; 79-167; 81-106; 65-167; 93-55).
3. Subject to reasonable rules, cameras and recording devices must be allowed at open meetings. K.S.A. 2008 Supp. 75-4318(e).
4. The KOMA does not dictate the location of the meeting, the size of the room, or other accommodation type considerations. The key to determining whether a meeting is "open" is whether it is accessible to the public. (AG Opins. No. 86-153; 79-253; 82-133; 80-148).
5. Telephone conference calls are allowed if the requirements of the act are met (*i.e.* notice and free access). (AG Opins. No. 81-268; 80-173; 80-159).

B. Executive Session K.S.A. 2008 Supp. 75-4319

1. Executive sessions are permitted for specified purposes, but first the body must convene an open meeting before public body can recess into executive session. K.S.A. 2008 Supp. 75-4319(a); (AG Opin. No. 81-22).
2. Binding action may not be taken in executive session. K.S.A. 2008 Supp. 75-4319(c); (AG Opin. No. 91-31). Reaching a consensus in executive session is permitted. [*O'Hair v. U.S.D. No. 300*, 15 Kan.App.2d 52 (1991)]. A "consensus," however, may constitute binding action and violate KOMA if a body fails to follow up with a formal open vote on a decision which would normally require a vote. [*City of Topeka v. Watertower Place Development Group*, 265 Kan. 148 (1998)].
3. The decision to hold executive session is discretionary; the KOMA never requires an executive session. (Other laws or policies need to be considered, however.)
4. Procedure--K.S.A. 2008 Supp. 75-4319(a) requires a specific procedure which must be followed in order to go into executive session:
 - a. Formal motion, seconded, and carried
 - b. Motion must contain statement of (1) Justification for closure; (2) Subject(s) to be discussed; and (3) Time and place open meeting will resume.

- c. Example: "Madam Chairman, I move we recess into executive session to discuss disciplinary action against a student in order to protect the privacy of the parties involved. We will reconvene the open meeting in the conference room at 8:30 p.m."
 - d. Motion for executive session should contain subject and justification statement, which are not the same thing. [AG Opins. No. 91-78; 86-33. *But see State v. U.S.D.A. 305*, 13 Kan. App.2d 117 (1988)]. The subject is one of the topics allowed for executive session listed in K.S.A.2008 Supp. 75-4319(b). The justification is an explanation of what is to be discussed (without revealing confidential information.)
 - e. Executive session motions must be recorded in minutes. K.S.A. 2008 Supp. 75-4319(a) KOMA does not require other information to be recorded. Other minutes for open or executive sessions are discretionary, unless some other law requires them. (AG Opin. No. 90-47).
5. Some of the subjects which may be discussed in an executive session:
- a. Personnel matters of non-elected personnel
 - 1. To discuss an individual, not groups. [AG Opins. No. 81-39; 88-25; 80-102. *But see* 13 Kan.App.2d 117 (1988)]. The purpose of this exception is to protect the privacy interests of individuals. Discussions of consolidation of departments or overall salary structure is not a proper topic.
 - 2. "Personnel" means employees of the public agency. (AG Opin. No. 87-10).
 - a. Personnel does not include appointments to boards or committees. (AG Opin. No. 87-10).
 - b. Personnel does not include independent contractors. (AG Opins. No. 87-169; 2002-28).
 - c. The KOMA does not give the employee a right to be present in the executive session or to force an open session. (Other laws or contracts may, however.)
 - d. This exception may be used to discuss applicants for employment. (AG Opin. No. 96-61).
 - b. Consultation with the body's attorney
 - 1. This is for attorney/client privilege so all elements of privilege must be present:
 - a. the body's attorney must be present;
 - b. the communication must be privileged, and
 - c. no other third parties may be present. (AG Opins. No. 78-303; 82-130; 82-176; 82-247; 92-56). Privileged communication is defined at K.S.A. 60-426; [*Pickering v. Hollabaugh*, 194 Kan. 804 (1965)].

2. Cannot be used to discuss letter received from attorney if the attorney is not present. (AG Opin. No. 86-162).
- c. Employer-employee negotiation
 1. Public bodies can meet in executive session to discuss conduct or status of negotiations, with or without the authorized representative who is actually doing the bargaining. (AG Opin. No. 79-125).
 2. Public bodies cannot have executive session under this exception when meeting with employees. (AG Opin. No. 80-43).
 3. School Boards--special rules: K.S.A. 72-5423(b). (AG Opin. No. 92-51).
- d. Confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorship.
 1. Economic development groups. (AG Opin. No. 88-148).
 2. Must be for data truly confidential in nature. [*See* K.S.A. 60-3320; *Southwestern Bell Telephone Co. v. KCC*, 6 Kan.App.2d 444, 457 (1980), *rev. den.* 230 Kan. 819 (1981); *All West Pet Supply v. Hill's Pet Products*, 840 F.Supp. 1433, 1437 (Kan. 1993)].
- e. Matters affecting a student, patient, or resident of public institutions
 1. Must concern a particular person (not students in general).
 2. Hearing must be open if requested by person involved.
 3. Inmates as residents of institutions (*see* AG Opin. No. 80-102).
- f. Preliminary discussions relating to acquisition of real property
 1. Acquisition only, not sale of property which must be discussed in open meeting. (AG Opin. No. 87-91).
 2. This exception can be used only when the primary focus of the discussion is real property; negotiating strategy alone is insufficient. (AG Opin. No. 89-92).
- g. Security, if open discussion would jeopardize security, K.S.A. 2008 Supp. 75-4319(13); any confidential records concerning security discussed in executive session are exempt from subpoena, discovery or other action.
6. Who can be present in an executive session—only the members of a public body have the right to attend executive session. (AG Opin. No. 86-14).
 - a. Mere observers may not attend. Inclusion of general observers means the meeting should be open to all members of the public. (AG Opins. No. 82-176; 86-143; 92-56).
 - b. Persons who aid the body in its discussions may be discretionarily admitted. (AG Opin. No. 91-31).
 - c. Johnson County school district; members of advisory boards have no right to attend. (AG Opin. No. 86-143).

- d. County clerk has no right to attend executive sessions. (AG Opin. No. 87-170).
- e. Non-clients cannot attend executive sessions for attorney-client privileged communication. (AG Opin. No. 82-247).

VI. ENFORCEMENT OF THE KOMA

- A. K.S.A. 2008 Supp. 75-4320 - civil, not criminal, penalties
 - 1. Fines - up to \$500 for each violation as determined by the district court - but only if action brought by attorney general or county or district attorney.
 - a. Statute appears to mean that this is \$500 per body member against the member individually.
 - b. Courts generally do not award significant fines.
 - c. No fine may be imposed for violation for serial communications that occur prior to July 1, 2009. (Senate Substitute for House Bill 2947).
 - 2. Voiding action
 - a. Binding action taken at a meeting not in "substantial compliance" with KOMA may be voided by court.
 - b. Action must be brought by county/district attorney or the attorney general. [*Stoldt v. City of Toronto*, 234 Kan. 957 (1984)].
 - c. Action to void must be filed within 21 days of the alleged violation/meeting.
 - 3. Injunction, mandamus, declaratory judgment: Can be brought by any person or by Attorney General or District/County Attorney. (*Stoldt*, 234 Kan. at 963).
 - 4. Injunctive relief, rather than mandamus, is proper remedy to address board of county commissioners' past violations of Open Meetings Act. K.S.A. 60-8016. [*Klein v. Johnson County Bd. Of County Comm'rs*, 77 P.3d 1009 (Kan.App. 2003) (unpublished case)].
 - 5. Under the KOMA, a private citizen has the authority to seek injunctive and mandamus relief but no authority to ask the court to void a contract. [*Krider v. Board of Trustees of Coffeyville Community College*, 277 Kan. 244, 83 P.3d 177 (2004). *See also Mid-Continent Specialists, Inc. v. Capital Homes, L.C.*, 106 P.3d 483, 279 Kan. 178 (2005)].
 - 6. Technical violations. The court will not void any action and will overlook technical violations of the law if the spirit of the law has been met, there has been a good-faith effort to comply, there was substantial compliance with the KOMA, no one was prejudiced, and the public's right to know had not been effectively denied. (*Stevens v. Board of Reno County Comm'rs*, 10 Kan.App.2d at 526).
- B. Procedure
 - 1. County/district attorney and attorney general have concurrent jurisdiction to investigate or bring an action. K.S.A. 2008 Supp. 75-4320.

- a. Policy of attorney general's office to first refer an alleged violation to the county/district attorney, the local law enforcement officer for the state. The decision to investigate or prosecute is discretionary on the part of the prosecutor. K.S.A. 2008 Supp. 75-753 requires county and district attorneys to give the Attorney General a yearly report on KOMA/KORA complaints it received or handled in the past year.
 - b. County/district attorney and attorney general can issue investigative subpoenas. K.S.A. 2008 Supp. 75-4320b.
 - c. If an individual wishes to bring a possible KOMA violation to the Attorney General's attention, the Attorney General's office traditionally asks that a complaint be submitted in writing, with as much supporting documentation (*i.e.* minutes) as possible.
2. Burden of Proof: Plaintiff has the initial burden to show a prima facie case. Burden then shifts to the defendant to justify its actions. K.S.A. 75-4320a(b).
 3. Plaintiff may receive court costs if violation established. Defendant may receive costs only if action was frivolous. K.S.A. 75-4320a(c) and (d).
 4. No requirement of specific intent to violate the law. "Knowing" violation occurs when there is purposeful commission of the prohibited acts. (*Palmgren*, 231 Kan. at 536-37).
 5. Venue is proper in the county where the action occurred. K.S.A. 75-4320a(a)
 6. Courts are to give KOMA cases precedence. K.S.A. 75-4320a(e)
- C. Other Consequences
1. Violation of the KOMA can be grounds for ouster from office pursuant to K.S.A. 60-1205; (AG Opin. No. 80-168). This is a separate action which must be filed by a public prosecutor.
 2. Alleged violation of the KOMA can be grounds for recall. [*Unger v. Horn*, 240 Kan. 740 (1987); K.S.A. 25-4301 *et seq.* But *see* K.S.A. 25-4302 grounds for recall; 2003 Amendment calls into question whether *Unger Rule* has been legislatively changed].
 3. Ouster or recall not automatic - these actions must be pursued **separately**.

Appendix C – Kansas Open Records Act

Kansas Open Records Act (KORA) Michael J. Smith, Assistant Attorney General Revision date: August 2009

I. PURPOSE OF KORA

- A. It is the public policy of Kansas that "public records shall be open for inspection by any person unless otherwise provided, and this act shall be liberally construed and applied to promote such policy." K.S.A. 45-216(a). *See also Cypress Media, Inc. v. City of Overland Park*, 268 Kan. 407, Syl. ¶ 3 (2000).
- B. "The burden of proving an exemption from disclosure is on the agency not disclosing the information." *State Dept. of SRS v. Public Employee Relations Board*, 249 Kan. 163, 170 (1991). K.S.A. 45-218.

II. RECORDS SUBJECT TO KORA

- A. The Act applies to public records (not to private records): Public records are defined as "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency. . . ." K.S.A. 2008 Supp. 45-217(g). *Harris Ent. v. Moore*, 241 Kan. 59, 63 (1987); public agency is defined at K.S.A 2008 Supp. 45-217(f). A.G. Opin. No. 90-14 (record in possession of public agency).
 1. The KORA covers more than just paper copies or written information.
 - a. Any recorded information regardless of form or characteristics" means that "public records are not restricted to written records." *Burroughs v. Thomas*, 23 Kan.App.2d 769, Syl. ¶ 1 (1997). This case held that autopsy photos are public records.
 - b. Computer data is a "record." *State ex rel. Stephan v. Harder*, 230 Kan. 573, 582 (1982) (considering prior records statute). A.G. Opins. No. 87-137, 88-152, 89-106, and 94-104.
 - c. Disclosure of Kansas Offender Registration Act information on the internet is allowed under Kansas statutes. *State v. Stevens*, 26 Kan.App.2d 606 (1999).
 2. Records not yet in existence are not subject to KORA; a prospective or standing request for "records as they become available" is not enforceable. A.G. Opin. No. 98-51.
 3. The KORA does not require that a record be created in order to respond to requests or in order to answer questions asking for "information." *But see* K.S.A. 2008 Supp. 45-221(d), which requires separation of open from closed information contained in public records; this may have the practical impact of requiring creation of a new document.

III. PUBLIC AGENCIES SUBJECT TO KORA

- A. Public Agency: the state or any political or taxing subdivision, or any office, officer, or agency thereof, or any other entity, receiving or expending and supported in whole or part by public funds. K.S.A. 2008 Supp. 45-217(f).
- B. No entity is included under KORA solely because it receives public funds in exchange for goods or services. K.S.A. 2008 Supp. 45-217(f)(2)(A). However, receipt of public funds may subject the financial records of a not for profit vendor to the KORA if they fall under the provisions of K.S.A. 2008 Supp. 45-240. *See* A.G. Opin. No. 2004-34.
- C. Although most private entities are not subject to the KORA, some nonprofit corporations might be included.
 - 1. Kansas cases and opinions.
 - a. Nonprofit entities Subject to KORA:
 - 1. Nonprofit providing mental health services is subject because there is specific statutory authorization for contracts with such nonprofits and in such a capacity it is performing a traditional governmental function. A.G. Opin. No. 94-111.
 - 2. Nonprofit city hospital because authorized by statute and created by city. A.G. Opin. No. 88-61.
 - b. Nonprofit Entities Not Subject to KORA unless they:
 - 1. Meet the terms of K.S.A. 2007 Supp. 45-240, which makes the KORA applicable to financial documents of non-profit entities receiving public funds of \$350 or more a year, unless otherwise exempted.
 - a. [Exemptions: (a) those non-profits that file a financial report with some public entity or agency; (b) those nonprofits that are health care providers, (c) individual persons and (d) for profit corporations or partnerships.]
 - b. [Public funds means money received from the United States, the state of Kansas, or any taxing subdivision thereof, or any officer, board, commission or agency thereof.]
 - 2. Meet the tests that make a non-profit a public agency.
 - a. Examples of nonprofits that are not subject to the KORA:
 - i. In *Memorial Hospital Assn., Inc., v. Knutson*, 239 Kan. 663 (1986), a nonprofit operating a county hospital was determined not to be subject to the Kansas Open Meetings Act, KOMA. The association leased the hospital for \$1.00 per year and received \$228,000 from the county mill levy budgeted by the county hospital board of trustees, about 4.8% of total revenues. The

- Court described this as limited receipt of public funds.
- ii. The NCAA is not subject to KORA because member schools pay dues in exchange for services provided by the NCAA. A.G. Opin. No. 97-64.
 - iii. WSU Endowment Assn. A.G. Opin. No. 82-172 (pre KORA).
 - iv. Sheltered Living, Inc., A.G. Opin. No. 2004-34 (privately formed non-profit providing services to special population, heavily regulated, funding from various public entities; however, no direct government entity oversight or control).
2. Cases from other states generally turn on (1) the extent of public funding, (2) whether there is a specific service provided for the funds, (3) whether the entity was created by a governmental entity or statute, and (4) whether it is providing a traditionally governmental service.
- D. Judges are not defined as a "public agency" subject to the KORA. K.S.A. 2008 Supp. 45-217(f)(2)(B).
1. A judge's telephone records do not become public merely because another branch of government's data processing facilities maintains the records for the judicial branch. A.G. Opin. No. 96-77.
 2. The KORA, by its express terms, does apply to court records. The KORA allows judicial branch to make its own rules, however, by Supreme Court rule. K.S.A. 2008 Supp. 45-221(a)(1).
 3. District courts probably have authority to close some records under certain circumstances. Court records under former record act discussed at *Stephens v. Van Arsdale*, 227 Kan. 676 (1980).
- E. Records made, maintained or kept by a legislator or member of a governing body are not public records. K.S.A. 2008 Supp. 45-217(g)(2).
- F. Records owned by private persons which are not related to a governmental function are not included. K.S.A. 2008 Supp. 45-217(g)(2).
- G. Does not include "any officer or employee" if not provided with "an office which is open to the public at least 35 hours per week." K.S.A. 2008 Supp. 45-217(f)(2)(C).
1. "This exclusion applies only to the part time officials personally and not the governmental entity they serve." Frederickson, *Letting the Sunshine In*, 33 Kan. L. Rev. 205, 219-20 (Winter, 1985).
 2. Offices which do not have regular office hours are required to establish reasonable hours when persons may inspect and copy documents, but such offices may require 24 hours advance notice. K.S.A. 2008 Supp. 45-220(d). For this provision to have any meaning, the 35 hour per week exclusion of K.S.A. 2008 Supp. 45-217(f)(2)(C) must not apply to the office, but rather only to individuals, officers or employees, working in such offices.

IV. RIGHT OF PUBLIC TO INSPECT AND MAKE OR OBTAIN COPIES OF RECORDS. K.S.A. 45-219.

- A. Unless closed pursuant to specific legal authority, all records are open for inspection. K.S.A. 45-218(a).
- B. Any person may make abstracts or obtain copies of a public record. K.S.A. 45-219.
- C. If copies cannot be made in the place where the records are kept the custodian shall allow arrangements to be made for use of other copying facilities. K.S.A. 45-219(b).
- D. Members of the public cannot remove a record without written permission of the custodian. K.S.A. 45-218(a).
- E. A public agency is not required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations, unless the items were shown or played at a public meeting, but not if copyrighted by someone other than the public agency. K.S.A. 45-219(a). However, under K.S.A. 2008 Supp. 45-220, access to the record must be provided unless there is an exception from disclosure based upon the content or nature of the item.
- F. Computerized information can meet the definition of a public record and must be provided in the form requested if the public agency has the capability of producing it in that form. The agency is not required to acquire or design a special program to produce information in a desired form, but has discretion to allow an individual who requests such information to design or provide a computer program to obtain the information in the desired form. A.G. Opins. No. 88-152 (voter registration lists); 89-106; 87-137.
- G. Agency may prescribe reasonable fees:
 - 1. Fees for copies shall not exceed the actual cost, including the cost of staff time.
 - a. 20 cents per page charged by a school district was not unreasonable as it reflected actual costs. A.G. Opin. No. 87-4. Other jurisdictions have generally not upheld copying costs in excess of \$.25 per page.
 - b. K.S.A. 45-219(c)(5) applies to fees for access to or copies of public records of a public agency within the executive branch of the state government. Any person requesting records may appeal the reasonableness of the fees charged for providing access to or furnishing copies of such state agency records to the secretary of administration whose decision shall be final. A fee for copies of public records possessed by such a state agency which is equal to or less than \$.25 per page shall be deemed a reasonable fee.
 - c. Fees, *i.e.* staff time, for retrieval of information are contemplated by KORA since the statute provides for fees for "staff time required to make the information available." K.S.A. 45-219(c)(1). *See*, Frederickson, Letting the Sunshine In, 33 Kan. L.Rev. 225-27 (Winter 1985).

2. If records are maintained on computers, fees may include the cost of any computer services, including staff time. A.G. Opin No. 93-126. Proration of costs of computerizing is probably precluded, as such costs are normally required even without record requests.
3. When public records are repackaged in a computerized form in order to facilitate public access to the records, additional fees for computerization may be charged, so long as the basic records are available elsewhere at cost. A.G. Opin No. 95-64.
4. Fees for providing access of copies of public records are to recoup the actual costs associated with providing access or copies. Such fees are not meant to pay for costs that would be incurred by a public agency even without a record request. *E.g.* Overhead, capital improvements, utility bills, rent/building payments, etc. However, the legislature has granted specific exceptions to this rule in order to fund the cost of the development of a database. *See* K.S.A. 74-2022.
5. Fees may include the cost of staff time spent in redacting open from closed information. *Data Tree, L.L.C. v. Meek*, 279 Kan. 445 (2005).

V. PROCEDURES FOR OBTAINING ACCESS OR COPIES OF RECORDS. K.S.A. 45-220.

- A. Each public agency is to appoint a freedom of information officer to assist the public with KORA requests and disputes. K.S.A. 45-226. That officer is to provide information on KORA including a brochure stating the public's basic rights under KORA. K.S.A. 45-227.
- B. Each public agency is to adopt procedures to be followed. Use the same procedure for all requests. K.S.A. 2008 Supp. 45-220(a).
- C. Each agency must provide, upon request, office hours, name of custodian of record, fees, and procedures for obtaining records. K.S.A. 2008 Supp. 45-220(e).
- D. Members of the public can inspect during regular office hours and any established additional hours. K.S.A. 45-218(b).
- E. If the agency does not have regular office hours it shall establish reasonable hours when persons may inspect records. An agency without regular office hours may require 24 hour notice of desire to inspect. Notice shall not be required to be in writing. K.S.A. 2008 Supp. 45-220(d).
- F. The public agency may require proof of identity. K.S.A. 2008 Supp. 45-220(b).
- G. The public agency may require the request to be written, but not on a specific form. K.S.A. 2008 Supp. 45-220(b). A.G. Opinion 2009-18.
- H. The public agency may require written certification that the requester will not use names and addresses obtained from the records to solicit sales to those persons whose names are contained in the list. K.S.A. 2008 Supp. 45-220(c)(2). *See also* K.S.A. 2008 Supp. 45-230. A.G. Opinion 2009-18. Other than to ask for the name/identity of the requestor, and this certification, the public agency should not require other information from requesters before complying with the KORA request.

- I. K.S.A. 45-217 and K.S.A. 2008 Supp. 45-220 permit the official custodian to designate other persons to carry out custodial duties. A.G. Opin. No. 90-89.
- J. The public agency must respond to the request as soon as possible, but not later than the end of the third business day following the date the request was received. K.S.A. 45-218(d).
 - 1. If access is not granted immediately, the public agency must give a detailed explanation for the delay. K.S.A. 45-218(d).
 - 2. If the request is denied, a written statement of the legal grounds for the denial shall be given upon request. K.S.A. 45-218(d). Some degree of specificity is required. "The burden of establishing the applicability of an exemption from disclosure under the Kansas Open Records Act requires the party claiming the exemption to provide more than conclusory language, generalized allegations, or mere arguments of counsel. A sufficiently detailed record must be provided to show the reasons why an exemption applies to the materials requested." *Southwest Anesthesia Associates v. Southwest Medical Center*, 23 Kan.App.2d 950, Syl. ¶ 2 (1997).
- K. Access may be denied if the request places an unreasonable burden in producing the record or is intended to disrupt the agency. K.S.A. 45-218(e). CAUTION - this provision should be used only in extreme circumstances. Refusal under this section must be sustained by a preponderance of evidence.
- L. The public agency may require payment of allowed fees in advance. K.S.A. 45-218(f).

VI. PROHIBITED USES OF CERTAIN RECORDS

- A. A list of names and addresses shall not be obtained from public records for the purpose of selling or offering for sale any property or service to the persons listed. K.S.A. 2008 Supp. 45-220(c)(2), K.S.A. 2008 Supp. 45-230.
 - 1. This provision does not prohibit commercial use generally, it just applies to use of the names to sell or offer to sell property or a service to those persons/entities on the list. A.G. Opin. Nos. 98-51 and 2009-18. A group of local ministers may use lists from public records to provide information about area churches. A.G. Opin. No. 2000-35. An agency may use its own records to inform of its own services or programs. A.G. Opin. No. 2006-26.
 - 2. This provision does not prohibit use of lists of names obtained from public records to solicit the purchase of property from the persons listed. A.G. Opins. No. 96-68 (water meters); 98-55 (promissory note underlying contract for deed).
 - 3. This provision pertains to the names and addresses of businesses listed in the public records, as well as individuals. A.G. Opin. No. 87-73.
 - 4. Any person (including the records custodian) who violates this law and gives, or receives records for such purpose can be penalized with the same civil fines and penalties in K.S.A. 45-223.
 - a. The agency may require a person who requests such records to provide written certification that she or he will not use the record

- for that prohibited commercial purpose. A.G. Opin. No. 87-137; K.S.A. 2008 Supp. 45-220(c).
- b.If requestor makes this certification the custodian is relieved of liability if custodian provides records in good faith reliance on certification. A.G. Opin. No. 94-132.
- 5. Cannot circumvent this provision indirectly; a third party who obtains this information from a "requestor" violates the law if it is used for commercial purposes.
 - a.A newsletter service which provides lists of names and addresses obtained from public records for its subscribers to solicit, is the type of activity prohibited under the KORA. A.G. Opin. No. 86-1.
 - b.Use of information obtained from public records to publish land ownership maps (A.G. Opin. No. 86-39) and "ownership product" documents (A.G. Opin. No. 89-47) does not violate the law.

VII. RECORDS THAT ARE MANDATORILY CLOSED

- A. Some public records are mandatorily closed by federal law, state statute, or Supreme Court Rule. These types of public records must be closed. The record custodian has no discretion or choice about whether to provide copies or access. Examples include but are not limited to:
 - 1. Child in need of care records and reports, including certain juvenile intake and assessment reports. K.S.A. 2008 Supp. 38-2212.
 - 2. Juvenile court records if under 14 and ordered closed by judge, K.S.A. 2008 Supp. 38-2309; juvenile law enforcement records, municipal court records if under 14, K.S.A. 2008 Supp. 38-2310; victims of sex offense by juvenile, K.S.A. 2008 Supp. 38-2310; "[a]ll records, reports and information obtained as a part of the juvenile intake and assessment process for juvenile offenders shall be confidential and shall not be disclosed except as provided in this section or by rules and regulation established by the commissioner of juvenile justice." K.S.A. 2008 Supp. 38-2310.
 - 3. Individually identifiable drug abuse treatment records. K.S.A. 2008 Supp. 45-221(a)(3).
 - 4. Financial information of an identifiable taxpayer filed with the county appraiser, or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. K.S.A. 2008 Supp. 45-221(b).
 - 5. Criminal history record information in possession of law enforcement agency. K.S.A. 22-4701 *et seq.*; K.S.A. 22-4707; K.A.R. 10-12-2. (Conviction information is in some circumstances open, non-conviction information is closed.) *See* A.G. Opin. No. 98-38. Custody time information is open. A.G. Opin. No.2002-29.
 - 6. Ballots. K.S.A. 25-2422. However, election petitions are open. A.G. Opin. No. 97-22.

7. Unexecuted search or arrest warrants. K.S.A. 21-3827. Affidavits and sworn testimony given to obtain such a warrant is closed except as to the defendant or as otherwise ordered by the court, K.S.A. 22-2502(c); A.G. Opin. No. 87-100. (It is a crime to disclose an unexecuted warrant, but this does not apply to personnel of a law enforcement agency disclosing a search warrant: (1) For the purpose of encouraging the person named in the warrant to voluntarily surrender; or (2) issued in a case involving the abduction of a child unless such disclosure is specifically prohibited by the court issuing such warrant).
 8. Presentence reports. K.S.A. 21-4605(b).
 9. Grand jury proceeding records. K.S.A. 22-3012. (Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the prosecuting attorney for use in the performance of his duties).
 10. Adult Authority presentence report, the pre-parole report, the pre-post-release supervision report and the supervision history. K.S.A. 22-3711.
 11. Mentally ill persons' commitment and treatment records. K.S.A. 59-212; K.S.A. 2008 Supp. 59-2979.
 12. All information, records and reports received or developed by an ombudsman or volunteer concerning long-term care facility residents' information. K.S.A. 2008 Supp. 75-7310.
 13. Peer review records. K.S.A. 65-4915(b).
 14. Adoption records. K.S.A. 59-2122; K.S.A. 65-2423; K.S.A. 59-2979; and K.S.A. 65-5601 to 65-5605.
 15. Income tax reports and returns. K.S.A. 2008 Supp. 79-3234(b).
 16. Racing Commission KBI background checks. K.S.A. 2008 Supp. 74-8804(o).
 17. Kansas Department of Health and Environment vital statistics - marriage, birth and death certificates. K.S.A. 2008 Supp. 65-2422d (restrictions are only on information in hands of vital statistics).
 18. Kansas Civil Rights Commission may not disclose investigation information without consent. K.S.A. 2008 Supp. 44-1005, K.A.R. 21-43-6
 19. Crime Victim Compensation Board, all records and information given to the Board is confidential. K.S.A. 74-7308(e).
 20. Social security numbers under some circumstances. K.S.A. 2008 Supp. 75-3520. *See* 5 U.S.C. § 552a note.
 21. Certain student information or educational records. 20 U.S.C. § 1232g.
 22. Convictions for violating a maximum posted speed limit of 55 miles per hour or more but not exceeding 70 miles per hour, by not more than 10 miles per hour in excess of such maximum speed limit. K.S.A. 2008 Supp. 8-1560d.
 23. Reports of contagious disease. K.S.A. 65-118.
- B. There are many federal, state or court laws/rules that may protect or close certain information in public records. The record custodians possessing such records should be familiar with the laws that apply to the records in their possession. If the record custodian denies a request for access or copies, K.S.A. 45-218(d)

requires the custodian to provide a written citation to the law(s) being relied upon, if that information is requested.

VIII. RECORDS THAT MAY BE DISCRETIONARILY CLOSED--K.S.A. 45-221

- A. K.S.A. 2008 Supp. 45-221(a) lists types of public records that are not required to be disclosed. The public agency has discretion and may decide whether to make these types of records available. A.G. Opin. No. 89-107. However, the burden of showing that a record fits within an exception rests with the party intending to prevent disclosure. *Southwest Anesthesia Serv. v. Southwest Med. Ctr*, 23 Kan.App.2d 950 (1997).
- B. Some of the records which may be discretionarily closed include:
1. Personnel records, performance ratings, or individually identifiable records pertaining to employees or applicants for employment in public agencies. K.S.A. 2008 Supp. 45-221(a)(4). A.G. Opin. No. 91-127. The personnel exception is designed to protect information that is normally kept in personnel records files, such as documentation of discipline, references and resumes, ADA and FMLA issues, as well as specific personal information such as home address and social security number. K.S.A. 2008 Supp. 45-221(a)(4) lists three categories of records which may be exempt from the disclosure requirement: "personnel records, performance ratings or individually identifiable records," all of which must pertain to the public agency's employees or applicants for employment. A.G. Opin. No. 99-55.
 - a. However, the "names, positions, salaries and lengths of service" of public officers and employees must be made public. K.S.A. 2008 Supp. 45-221(a)(4); A.G. Opins. No. 88-61; 91-50 (salary deduction not open); 92-132 (pension plan part of salaries); 2000-8 (names of members appointed to states boards must be disclosed).
 - b. K.S.A. 2008 Supp. 45-221(a)(4) opens actual compensation employment contracts or employment-related contracts or agreements.
 - c. Home addresses of public employees may be closed. A.G. Opin. No. 97-52. *See also United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487 (1994) (disclosure of home addresses can be a clearly unwarranted invasion of personal privacy.) Employee's photos, telephone numbers and family members names may be closed. A.G. Opin. No. 2006-8.
 - d. The exemptions in K.S.A. 2008 Supp. 45-221(a)(4) and (15) do not apply to nonemployees or to independent contractors. Independent contractors are not "personnel," so records concerning them may not be closed under this exception. *Southwest Anesthesia Serv. v. Southwest Med. Ctr*, 23 Kan.App.2d 950 (1997).

- e. Most terms in employment contracts are open, except to the extent that a term contains personal or other information specifically closed by other laws. A.G. Opin. No. 99-55.
- 2. Letters of reference or recommendation pertaining to the character or qualification of an identifiable individual, K.S.A. 2008 Supp. 45-221(a)(6), unless the recommendation is for someone to fill an elected or appointed office.
- 3. Criminal investigation records. Defined at K.S.A. 2008 Supp. 45-217(c).
 - a. While criminal investigation records may be discretionarily closed, this is the one category of records for which criteria for judicial review of the decision is established in the statute. The factors to be considered in opening the records basically weigh public interest in disclosure vs. harm of disclosure. K.S.A. 2008 Supp. 45-221(a)(10)(A)-(F). K.S.A. 2008 Supp. 45-221(a)(10) requires custodians of criminal investigation records to, upon request, identify which factor(s) in (A) - (F) are applicable to the record(s) being closed under this exception.
 - b. "Public interest" . . . means an interest in a matter affecting a right or expectancy of the community at large. Mere curiosity about the circumstances surrounding an investigation is not sufficient." *Harris Enterprises, Inc. v. Moore*, 241 Kan. 599 (1987). The legislative intent behind the criminal investigation records exception to the Kansas Open Records Act is to protect innocent persons whose names might be involved in an investigation, either as possible suspects or as informants. *Seck v. City of Overland Park*, 29 Kan. App. 2d 256 (2000).
 - c. Court records and docket sheets may not be closed as criminal investigation records. K.S.A. 2008 Supp. 45-217(c); A.G. Opin. Nos. 87-145 and 93-103.
 - d. Police blotter, roster of jail inmates and the front page of a standard offense report are required to be open to the public; mug shots and standard arrest report are not required to be open to the public. A.G. Opin. No. 87-25, 98-38. If a police department does not maintain a blotter, they are under a common law duty to disclose basic information about arrests reasonably contemporaneously with the arrest. A.G. Opin. No. 98-38. Custody time is open. A.G. Opin. No. 2002-29.
 - e. A log of breath test machine results is a criminal investigation record and not required to be open. A.G. Opin. No. 87-63.
 - f. Coroner reports are subject to disclosure unless they have been filed with the clerk of the district court and designated as a criminal investigation record. A.G. Opin. No. 86-5 and K.S.A. 22a-232. Autopsies as part of coroner's reports are open unless the coroner's report is filed as a criminal investigation record. *Burroughs v. Thomas*, 23 Kan.App.2d 769 (1997).

- g. Other records of investigations of a death may be closed even if the death turns out to be from natural causes so long as there was initially a criminal investigation. *Seck v. City of Overland Park*, 29 Kan. App. 2d 256 (2000).
4. Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law. K.S.A. 2008 Supp. 45-221(a)(5).
 5. Notes, preliminary drafts, research data in the process of analysis, memoranda or other records in which opinions are expressed or policies or actions are proposed. This exception does not apply when such records are cited or identified in a public meeting. K.S.A. 2008 Supp. 45-221(a)(20). A.G. Opin. No. 90-14. *See also*, K.S.A. 2008 Supp. 45-221(a)(21) and (22); records of public agency having legislative powers. A.G. Opin. No. 90-92.
 - a. These three provisions "are intended to protect an agency's internal pre-decisional deliberations from early disclosure." Frederickson, *Letting the Sunshine In*, 33 Kan. L.Rev. 205, 249 (Winter 1985).
 - b. Although reports prepared by a consultant for an agency are probably protected by this exception, other documents disclosed outside of government probably cannot be withheld based upon this exception. *See Dept. of the Interior v. Klamath Water Users Protective Association*, 532 U.S. 1 (2001).
 6. Library patron and circulation records which pertain to identifiable individuals. K.S.A. 2008 Supp. 45-221(a)(23). Library archive and museum materials contributed by private parties may be closed if closure was a condition of donation. K.S.A. 2008 Supp. 45-221(a)(7).
 7. Public records containing information of a personal nature when public disclosure would constitute a clearly unwarranted invasion of personal privacy. K.S.A. 2008 Supp. 45-221(a)(30). A.G. Opins. No. 92-149 (victim of sex offense); 99-55, 98-38, 87-168 (social security number). *See* K.S.A. 2008 Supp. 75-3520 about social security numbers and their release.
 - a. This is a very limited exception, and often turns upon the circumstances of each individual situation.
 - b. K.S.A. 2008 Supp. 45-217(b) defines "clearly unwarranted invasion of personal privacy" to mean "revealing information that would be highly offensive to a reasonable person including information that may pose a risk to a person or property and is not a legitimate concern to the public."
 - c. Cases from other states are not consistent, but generally employ a balancing test of public interest vs. private harm, allowing closure only when there is a demonstrable harm.
 - d. Social Security numbers, mothers' maiden names and dates of birth contained in public records held by a county register of deeds can be closed to a business information provider. *Data Tree, L.L.C. v. Meeks*, 279 Kan. 445 (2005).

- e. K.S.A. 75-451 *et seq.* allows victims of domestic violence, sexual assault, trafficking or stalking to obtain a "fake" address from the Secretary of State's office for use when responding to record requests.
- 8. Records concerning prospective location of a business or industry where no previous disclosure has been made. K.S.A. 2008 Supp. 45-221(a)(31).
- 9. Exceptions related to bids:
 - a. Specifications for competitive bidding until the specifications are approved. K.S.A. 2008 Supp. 45-221(a)(27).
 - b. Sealed bids until a bid is accepted or all rejected. K.S.A. 2008 Supp. 45-221(a)(28). *But see*, A.G. Opin. No. 2008-3 when a document is otherwise open per another statute.
- 10. Engineering and architectural estimates for public improvements. K.S.A. 2008 Supp. 45-221(a)(33). (To prevent bidders from learning agency's estimates of cost of a project.)
- 11. Financial information submitted by contractor in qualification statements. K.S.A. 2008 Supp. 45-221(a)(34). *See also* K.S.A. 2008 Supp. 45-221(c)(2) and K.S.A. 60-432, trade secrets.
- 12. Records concerning emergency or security information or procedures. K.S.A. 2008 Supp. 45-221(a)(12) and (45); also not subject to subpoena or discovery.
- 13. Military discharge papers (DD-214) received by a county register of deeds may only be released to specific parties. K.S.A. 2008 Supp. 45-221(a)(46).
- 14. Information that would reveal the location of a safe-house or shelter where persons are protected from abuse, or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault. K.S.A. 2008 Supp. 45-221(a)(47) as amended by L. 2009 ch. 125.
- 15. Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure. K.S.A. 2008 Supp. 45-221(a)(2). (Includes attorney client privilege. Possibly includes trade secrets, K.S.A. 60-432.)
 - a. Attorney billing records are not closed, *per se*, as either attorney client privilege or work product privilege, and therefore generally must be disclosed if in the possession of a public agency. All narrative statements in attorney billing statements are not *per se* privileged. Rather, parties claiming the privilege will have to show its application to particular narrative statements in billing records. Parties objecting to discovery on the basis of the attorney-client privilege bear the burden of establishing that the privilege applies. To carry the burden, they must describe the documents or information to be protected, state precise reasons for the objection to discovery, and provide sufficient information to enable the court to determine whether each element of the asserted privilege is satisfied. A blanket claim as to the applicability of a privilege does not satisfy the burden of proof. Some detail may be closed, but the

burden is on the public agency to justify it. *Cypress Media, Inc. v. City of Overland Park*, 268 Kan. 407 (2000).

- b. An investigation by an attorney for a client for the purpose of providing legal advice may be closed as attorney client privileged. A.G. Opin. No. 99-48.
16. Attorney work product. K.S.A. 2008 Supp. 45-221(a)(25).
17. Medical, psychiatric, psychological, alcohol or drug treatment records which pertain to identifiable individuals. K.S.A. 2008 Supp. 45-221(a)(3).
18. Investigatory records of agencies involved in civil or administrative adjudication, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent. K.S.A. 2008 Supp. 45 221(a)(11).
 - a. Documents collected or created during the course of an agency's civil investigatory file becomes open at the completion of the case unless otherwise controlled by another exception or statute. A.G. Opin. No. 97-76.
 - b. Records pertaining to an internal investigation of an agency's employee, disclosure of which would not interfere with a prospective administrative adjudication or civil litigation nor disclose the identity of a confidential informant, may nevertheless still be discretionarily closed if they fit the definition of a personnel record. A.G. Opin. No. 91-127.
 - c. Correspondence between a public agency and a private individual, other than correspondence intended to give notice of an agency action, policy or determination. K.S.A. 2008 Supp. 45-221(a)(14). A complaint to a professional licensing board may be closed, the letter in response to the complaint is open because it is a determination if there is a finding of no probable cause. A.G. Opin. No. 97-76.
19. Peer review/risk management records concerning certain health care professionals and facilities. K.S.A. 2008 Supp. 45-221(a)(35).
20. Software, except that register about what information the agency has on computer and what is available in what format. K.S.A. 2008 Supp. 45-221(a)(16).
21. Unless otherwise required by law, a taxpayer's financial information required or requested by a county appraiser to determine property value for ad valorem taxation shall not be disclosed. K.S.A. 2008 Supp. 45-221(b). A.G. Opin. No. 89-118.
22. Statistical information not descriptive of any identifiable person is subject to disclosure. K.S.A. 2008 Supp. 45-221(e).

IX. OTHER LIMITS ON CLOSURE

- A. Contractual provision attempting to close certain terms is void as against public policy, provided no other closure exemptions apply. A.G. Opin. No. 91-116; 93-55.

1. A settlement agreement cannot be closed by the parties, except to the extent that the KORA would allow closure, *i.e.*, some parts may constitute a personnel record, some might be clearly unwarranted invasion of privacy.
 2. There have been several district court cases involving agreements to close settlement agreements involving public agencies. Not only have the courts held the agreements to be open, they awarded attorneys' fees to the plaintiff in at least one case.
- B. If a public record contains material not subject to disclosure, that portion of the record must be deleted and the record made available. K.S.A. 45-220(d). *See also, Tew v. Topeka Police & Fire Civ. Serv. Comm'n*, 237 Kan. 96 (1985); *State ex rel. Stephan v. Harder*, 230 Kan. 573 (1982); K.S.A. 45-221(d).
- C. If a record is reviewed and discussed during an open meeting, a record that may ordinarily be discretionarily closed, generally becomes open. A.G. Opin. Nos. 92-132 and 95-119.

X. SUNSET OF CLOSURE EXEMPTIONS

- A. Specific closure laws must be reviewed and renewed every five years; otherwise they expire. The next expiration date is July, 2010. K.S.A. 2008 Supp. 45-229(b)-(h).

XI. ENFORCEMENT OF THE KORA

A. Investigations

1. Investigative subpoenas may be issued by the Attorney General and District/County Attorneys. K.S.A. 45-228.
2. Attorney General and County/District Attorneys will accept complaints from public. A.G. normally refers complaints against local government to the County/District Attorney.
3. Ordinarily, the Attorney General's office requests that complaints be timely made and be put in writing. This is done in order to verify facts, keep a record of the statements made, and in general assist with any investigation that becomes necessary.

B. Litigation

1. Any person, the Attorney General, or a County/District attorney, may file suit in district court.
 - a. Suit must be brought in the county where the records are located. If the records are located out of state, there is no cause of action under KORA. *Altevogt v. Youth Friends*, 29 Kan.App.2d 473 (2001). *See also Wichita Eagle v. Simms*, 50 P.3d 66, 274 Kan. 194 (2002).
2. District court may order injunction or mandamus.
3. The court "shall" award attorney fees against defendant if it finds denial of access was not in good faith or against plaintiff if the action was not in good faith. K.S.A. 2008 Supp. 45-222. Reasonable attorney fees may be

assessed, even upon appeal, as part of costs. *See Telegram Pub. Co. Inc., v. KDOT*, 275 Kan. 779 (2003).

4. Fines of up to \$500 for "each violation" against public agency if the agency "knowingly violates any of the provisions of this act or that [it] intentionally fails to furnish information as required by this act. . . ." Such cases seeking a fine may only be brought by the Attorney General, District or County Attorney. K.S.A. 45-223.
5. Such actions to be given precedence by the court.

XII. KANSAS PUBLIC RECORDS PRESERVATION ACT. K.S.A. 45-401 *et seq.*

The KORA does not speak to preservation of public records. "Nothing in this act shall be construed to require the retention of a public record nor to authorize the discard of a public record." K.S.A. 45-216(b). However, other laws may require that a public record be kept for a period of time.

- A. State agencies and counties are subject to the Preservation Act and are prohibited from destroying public records except as permitted by minimum records retention schedule as set forth by State Records Board. K.S.A. 45-403; 45-404(b).
- B. State Records Board, while technically attached to the Kansas Department of Administration, in practice functions through State Historical Society, Div. of Archives. K.S.A. 75-3501 *et seq.*
- C. The Records Board has published a Local Government Records Manual which sets forth the schedule of minimum retention periods for counties. Information, including a copy of the schedule, may be accessed at <http://www.kshs.org/government/records/localgovt/index.htm>. County commissions may petition Records Board for departures from local government general schedule. K.S.A. 45-405(c).
- D. Records Board has published State Records Retention Manual, which contains general schedule for state agencies. Information, including a copy of the schedule, may be accessed at <http://www.kshs.org/government/records/stategovt/index.htm>. State agencies are required to appoint a records officer to act as liaison to Records Board. K.A.R. 53-4-1. State agencies' records officers prepare and submit to the Records Board proposed specific retention schedules, which are approved by the Board.
- E. Electronic Records are also subject to retention. *See* www.kshs.org/government/records/electronic/index.htm
- F. Altering, destroying, defacing, removing or concealing any public record without legal authority is a class A misdemeanor. K.S.A. 21-3821.
- G. Counties, with approval of state archivist, may transfer noncurrent records to a county historical society, library, college, etc. K.S.A. 45-405(d). Any transferred records must not be of a confidential or restricted nature.
- H. Cities are not subject to the records retention board's schedule. However, the state archivist can advise on retention issues and there are statutory requirements for retention of certain city records. *See* K.S.A. 12-120.

Appendix D – Suggested Format for Meetings

Note: This appendix was in the original township book prepared by the Butler County Attorney. The original source of this document is not known, although it appears to have been prepared for use by a city.

SUGGESTED FORMAT FOR MEETINGS CODE OF PROCEDURE Edition of 2004

Definitions

Section 1. Governing Body. The term governing body shall include the township trustee, township treasurer, and township clerk.

Section 2. Quorum. A quorum shall consist of at least two member of the Governing Body.

Meetings

Section 3. Regular Meetings. Regular meetings of the township will be held at a time, place, and date certain as set by the township by ordinance and in accordance with applicable state law.

Section 4. Special Meetings. Special meetings will be held only for a special purpose and will be called in accordance with applicable state law.

Section 5. Work Sessions. No agenda is required for a work session and no binding action may be taken during the work session.

Section 6. Quorum. A quorum is required at all meetings during which binding action will be taken by the township.

Section 7. Public Comment. If public comment is allowed during the meeting, the citizen desiring to comment on matters of a general nature, not specific to an agenda item, shall sign up in advance of the meeting and shall provide his or her name and address for the purpose of putting both in the minutes of the meeting. Any public comment taken on specific agenda items shall require the citizen to state his or her name and address for the minutes. The mayor may limit the time of each citizen based upon the number of people wishing to speak and the amount of time available for the public comment portion of the meeting.

Agenda

Section 8. Agenda. Prior to each regular and special meeting, the township will distribute an agenda to each governing body member and it will be made available to the public at that time.

Section 9. Setting Agenda. The governing body of the township shall designate an individual to be in charge of setting the agenda.

Section 10. Agenda Items. Any governing body member or staff member of the township may request to have an item placed on the agenda. Members of the public may not place an item on the agenda, but may have a governing body member sponsor such an item.

Section 11. Additions to Agenda. Items may be added to or removed from the agenda at the beginning of a regular meeting by motion approved by a majority of those governing body members present and voting. No items may be added to the agenda of a special meeting.

Section 12. Order of Business. At the hour appointed for the meeting, the mayor shall call the meeting to order. In council cities, the president of the council shall chair the meeting in the absence of the mayor. Upon having a quorum present, the governing body shall proceed to business, which shall be conducted in the following order:

1. Approval of the minutes of the last regular meeting and intervening special meetings;
2. Presentations of petitions, public comments, memorials;
3. Presentation of claims and appropriation ordinance;
4. Unfinished business;
5. New business;
6. Reports of staff and committees;
7. Consent Agenda;
8. Adjournment.

Section 13. Consent Agenda. By majority vote of the governing body, any item may be removed from the consent agenda and considered separately.

Section 14. Order of Business, Suspended or Amended. By a majority vote of the governing body, the order of business May be amended to add or delete sections as appropriate, or may Suspend in its entirety to consider other matters. Executive sessions May be held at any time in the order of business

Motions

Section 15. Motions; Second. All motions require a second before such motion may be considered.

Section 16. Debate. All motions are debatable unless otherwise noted in the section governing that motion.

Section 17. Substantive Motion. Only one main substantive motion may be pending on the floor at any one time. It must be withdrawn or advanced to a vote before another substantive motion is introduced.

Section 18. Substitute Motion. Substitute motions are prohibited. Substantive motions must be withdrawn or advanced before another substantive motion is introduced.

Section 19. Motion to Amend. A motion to amend is in order when the proposal is to change, add, or delete words from the main substantive motion. If the motion is to amend a document before voting on its adoption, it is advisable to reduce the change to writing, but it is not required if all members of the governing body understand the amendment. A vote on an amendment is not a final vote on the underlying substantive motion. To pass the underlying substantive motion requires a vote.

Section 20. Motion to Pass an Ordinance. All ordinances of the township shall be considered at a public meeting of the governing body. After consideration and amendment (if any) of the ordinance, the question shall be: "Shall the ordinance pass?" No ordinance shall contain more than one subject, which shall be clearly expressed in its title, and no section or sections of an

ordinance shall be amended unless the amending ordinance contains the entire section or sections as amended and the section or sections amended shall be repealed. [See Sections 33-37 for ordinance voting requirements.]

Section 21. Motion to Refer. If the governing body deems it appropriate, it may refer an ordinance, resolution, contract, or other matter back to staff, committee, board, or other appropriate location for further review and consideration. Such motion may or may not contain a time certain for the item to be returned to the governing body.

Section 22. Motion to Reconsider; Prohibited. Motions to reconsider are prohibited. Any governing body member may make a new substantive motion on a matter previously considered by the township.

Section 23. Motion to Call the Previous Question. This motion is not debatable and, if passed by a majority of the governing body, calls for an immediate vote on the substantive motion. This motion requires a vote.

Section 24. Motion to go into Executive Session. The motion to go into executive session shall be made as follows: "I move that the governing body recess into executive session pursuant to the _____ exception in order to discuss _____ (general description), the open meeting to resume in the township council (commission) chamber at ____ (time)." The motion may also state who is to be present in the executive session, although this is not required. This motion must be made, seconded, and carried. Such motion shall be recorded in the minutes of the meeting. The meeting may not reconvene until the time stated in the motion.

Section 25. Motion to Adjourn to a Later Date and Time. If the governing body is unable to complete its agenda during the time allotted for the meeting, the meeting may be adjourned to a time and date certain to continue the regular or special meeting. The motion shall state the time, place, and date for the meeting to reconvene. If the motion is adopted, the meeting is adjourned to the specified time, place, and date.

Section 26. Motion to Adjourn. At the conclusion of the agenda, a motion to adjourn is in order and requires a majority vote.

Voting

Section 27. Form of Vote. All votes shall be by voice vote or, in the alternative, the mayor may request that a vote be by "show of hands." No vote shall be by secret ballot.

Section 28. Division. The mayor or any member may request a formal division of vote. At the discretion of the mayor, division may be by either a poll of each member or a show of hands.

Section 29. Duty to Vote. Members of the governing body have a duty to vote unless such member choosing to abstain has a conflict of interest or other conflict that appears to make voting on an issue improper. Any member who abstains must state, for the purpose of its inclusion in the minutes, the reason for the abstention.

Section 30. Recording. Upon final passage of a matter, the vote shall be recorded in the minutes.

Application & Amendment

Section 31. Rules. For those matters not covered by these rules, the procedure shall be as decided by a majority vote of the governing body. These rules may be amended after adoption by a

subsequent ordinance amending specific rules as identified in the ordinance. Such ordinance amends the adopting ordinance. The rules may not be suspended by the governing body during any meeting.

Appendix E – Interlocal Cooperation

This appendix was extracted from the County Commissioners Desk Book published by the Kansas Association of Counties.

INTRODUCTION

Kansas local governments have broad legal authority to cooperate as to the performance of public functions and services. There are three general types of Kansas statutes on intergovernmental cooperation:

1. The Interlocal Cooperation Actⁱ allows two or more local units to do cooperatively or jointly that which they are commonly empowered to do.
2. The Interlocal Service Statutesⁱⁱ provide broad authority for any city or county to contract with any other city or county to perform any governmental service, activity or undertaking, which each contracting city or county is authorized to perform by law.
3. The Functional Consolidation Statuteⁱⁱⁱ gives counties, townships, cities, school districts, library districts, park districts, road districts, drainage or levee districts, sewer districts, water districts, and other taxing subdivisions created under state law, broad authority to consolidate operations, procedures and functions in the interest of efficiency and effectiveness.

The general cooperative statutes are not the only authority for interlocal cooperation; there are several specific cooperation statutes that authorize two or more governmental units to cooperate as to a certain function or service. The general highway and public works statutes promote cooperation between local and state public works and highway agencies, for instance.

INTERLOCAL COOPERATION ACT

K.S.A. 12-2901 *et. seq.* comprises the Kansas Interlocal Cooperation Act. This law essentially permits any two or more public agencies to do cooperatively or jointly that which they are commonly empowered to do. The agencies involved in the intergovernmental cooperation venture may include this state, any other state, the United States, an Indian tribe, or any private agency, as well as local units of government including counties, townships, cities, school districts and other districts. The definition is broad enough to cover any separate political or taxing subdivision of the state.

Since its enactment in 1957, the purposes specified in the statute as permissible areas of cooperation have been expanded. The present statute permits cooperation in such areas as:

1. economic development
2. public improvements
3. public utilities
4. police protection

5. public security and safety
6. emergency preparedness (including but not limited to intelligence, anti-terrorism and disaster recovery)
7. libraries
8. data processing services
9. educational services,
10. building and related inspection services
11. flood control and storm water drainage
12. weather modification
13. sewage disposal and refuse disposal
14. park and recreational programs and facilities
15. ambulance service
16. fire protection
17. the Kansas Tort Claims Act or claims for civil rights violations

These specified areas are illustrative, and not exclusive, so agreements under the statute are not limited to the above illustrations. Interlocal agreements increase the capacity and efficiency of local or smaller governmental entities by allowing them to:

1. Realize economies of scale.
2. Solve common problems through joint action.
3. Deliver governmental services that might otherwise be unavailable.
4. Reduce costs and create efficiencies

Contents of the Agreement

The requirements of an interlocal agreement are outlined in K.S.A. 12-2904. The statute requires that the agreement list the purpose of the agreement, its duration, any separate entity, joint board or administrator created by the agreement, the manner of financing, the permissible methods of terminating the agreement and disposing of the property, and any other necessary and proper matters.

Approval by the Attorney General

Written agreements entered into under this statute are to be reviewed by the attorney general to determine if they are in proper form. Agreements between two or more public agencies establishing a council or other organization of local governments for the promotion of intergovernmental cooperation need not be submitted for review by the attorney general.

Filing

An interlocal agreement must be filed with the register of deeds of each county where the public agencies are located, and also with the Kansas Secretary of State. This requirement is outlined in K.S.A. 12-2905. Failure to file the agreement as required by law does not affect the validity of the agreement.^{iv}

INTERLOCAL SERVICE STATUTES

Unlike an interlocal joint cooperation agreement where both public agencies enter into an agreement for joint responsibilities, an interlocal service contract usually allows for one public agency to perform the service for other, in return for payment.

For example, K.S.A. 12-2908 provides broad authority for any city, county or township to contract with any other city, county or township to perform any governmental service, activity or undertaking, which each contracting city, county or township is authorized to perform by law. The approval of the attorney general is not required. The contract must be authorized by the governing bodies and must set forth the purpose, powers, rights, objectives and responsibilities of the contracting parties.

Because of its broad authorization and simplicity, this act is being increasingly used when only cities and/or counties are involved in a service arrangement. When a joint public agency is needed, or where the joint or cooperative performance of a service is required, the interlocal cooperation act is used.

An interlocal services contract under this statute is not considered an interlocal agreement under K.S.A. 12-2901 *et. seq.*^v

FUNCTIONAL CONSOLIDATION STATUTE

A third statute entitled “Governmental Organization” is found at K.S.A. 12-3901 *et. seq.*, and gives counties, townships, cities, school districts, library districts, park districts, road districts, drainage or levee districts, sewer districts, water districts, fire districts, and other taxing subdivisions created under state law, broad authority to consolidate operations, procedures and functions in the interest of efficiency and effectiveness.

Consolidation under this statute occurs within a single governmental unit (“internal” consolidation), or through joint action of two or more governmental units (“external” consolidation). The governing body, or governing bodies, must first find by resolution that duplication exists and that operations, procedures or functions can be more efficiently and effectively exercised by consolidation. An office or agency is then designated to perform the consolidated function, and the time, form, and manner of implementation of the consolidation is set. Identical resolutions must be passed by each governing body when more than one governmental unit is involved in a consolidation.

Elimination of an elective office must be approved by a majority of the electors who are being served by that office. The election must be held in the county where the elective office is located, and the election must be held at the same time as an election for governor of the state of Kansas. The office cannot be eliminated until the election.^{vi} A transfer or elimination of statutory duties from an elected office is considered an elimination of the office and must be submitted to election as well.^{vii}

A county may use this statute to create a department of corrections and appoint a director of corrections to run the county jail.^{viii} A county can abolish the office of county treasurer using this statute.^{ix} A county can consolidate the register of deeds, treasurer and clerk into one non-elected office so long as the requirements of the act are met.^x

ⁱ K.S.A. 12-2901 *et. seq.*

ⁱⁱ K.S.A. 12-2908 and 12-2909

ⁱⁱⁱ K.S.A. 12-3901 *et. seq.*

^{iv} A.G. 88-37.

^v *See* K.S.A. 12-2901 *et. seq.*

^{vi} K.S.A. 12-3903.

^{vii} K.S.A. 12-3903(c).

^{viii} A.G. 94-19.

^{ix} .A.G.O. 88-5.

^x A.G.O. 98-33.