



Kansas Local Road Management Handbook

A guide for Kansas county road and bridge officials



2015 edition

Kansas LTAP meets the needs of road and bridge departments in local governments for information, training and technical assistance.

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■ ■ KANSAS LOCAL ROAD MANAGEMENT HANDBOOK ■ ■

APPLICABILITY TO TOWNSHIPS AND CITIES

This handbook was specifically prepared for new county road supervisors and county engineers, but can be helpful for township and city officials. To a large extent townships work under the same state laws as counties; however, the sections concerning federal aid and bridge inspection do not apply to townships. Township officials have another reference source, the *Township Book*, available in electronic format from the Kansas Association of Counties. Cities have more home rule authority than counties, and on some matters there are different state laws that apply to cities. The sections of this handbook that may not apply inside cities include Construction Projects, Disposal of Surplus Property, and Road Right-of-way Issues. For cities of less than 5,000 population, the section on Federal Aid does not apply directly; these cities need to work through the county for federal aid.

ACKNOWLEDGEMENTS

Many of the non-road topics in this handbook were based on the *County Commissioners Desk Book* published by the Kansas Association of Counties (KAC). The topics have been condensed, and a more complete discussion may be included in the *Desk Book*, which is available for purchase from KAC. In 2011 the Kansas County Highway Association (KCHA) Liaison Committee reviewed the contents of the first version of this handbook, and provided valuable assistance. The Bureau of Local Projects of the Kansas Department of Transportation has furnished much of the information concerning bridge inspections and federal aid programs. Lisa Harris of the Kansas Local Technical Assistance Program (LTAP) prepared the chapter on education. LTAP staff members Lisa Harris, Pat Weaver and Tom Mulanazzi, P.E. & L.S. reviewed the entire handbook and provided valuable information. This 2015 edition of the handbook contains three new sections: Road Safety, Road Damage, and Drainage. There were also major changes to the sections on Signing, Federal Aid, and Bridge Inspections.

—Norm Bowers, L.S. & P.E., for Kansas LTAP



This handbook and the information it contains are provided as a public service by the Kansas Local Technical Assistance Program, a program of the Kansas University Transportation Center. Funding for production of this guide was provided through Technology Transfer (T2) Funds from the Federal Highway Administration's Kansas Division Office and the Kansas Department of Transportation.

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Model "20" operating Adams Road Maintainer.

Road maintenance in the 1920s and 1930s.

■■■■■

INTRODUCTION

This handbook was developed for new road supervisors and county engineers. If you have not worked for a government before, you are about to gain a lot of new experiences. From the outside looking in, government jobs may seem relaxed and unchallenging; however, you will find the road supervisor's job is much harder than you imagined. The road supervisor is pulled in three directions: from the public for services, from elected officials to perform more with limited resources, and from your employees to meet their needs and provide a productive work environment.

The content of this handbook assumes that a new road supervisor has more difficulty understanding the administrative responsibilities in operating a local public works department rather than fieldwork like construction and maintenance. For that reason this guide emphasizes administrative issues, laws, rules and regulations that a road supervisor needs to understand.

Government operates differently than the private sector. Private businesses can usually do anything except what is prohibited by law. Generally local governments can do only what is authorized by state law. For this reason you need to make sure you have authority to do what you want to do. While this handbook will be a good source of information about standard practices in Kansas, it is not a substitute for legal advice. Each specific problem has individual circumstances that must be considered. If in doubt about any situation, it is appropriate to contact your legal counsel.

As a public employee many people will be watching and evaluating your performance—including your direct supervisors, commissioners, and perhaps a county administrator, but also taxpayers and other people who drive on local roads. It is important that every decision be fair and impartial and also appear to the public to be fair and impartial.

As a road supervisor you are a department director in charge of an important function of county government. Keep in mind a saying by J.R. McMahon of Miami County: "It is not how hard you work, or what you do...you will be judged on your department's accomplishments."

■■■■■

ORGANIZATION OF COUNTY GOVERNMENT

What is a County? A county is a political subdivision of the state and is usually considered to be an instrumentality or arm of the state or state government. A county is distinguishable from a city in that a county is an involuntary quasi-corporation and an arm or agent of the state created by the state to perform governmental and political functions. In

contrast, a city is a voluntary corporation organized by the action of its own inhabitants for their own local good.

Role of the County. Counties have two separate and distinct roles when providing services. The first is as an agent of the state. The second is more like a municipality. Historically, counties were responsible for public health, safety and welfare matters and for providing community facilities—roads, bridges, parks, and utilities needed to support daily life. Recently, however, the forces of change produced demands so that even the smaller counties have taken on more services—such as economic development, comprehensive planning, zoning, environmental protection, mental health centers, programs for senior citizens, health agencies and drug counseling.

County Governance. The ultimate authority in a county is vested in a duly-constituted governing body when it is in a meeting and in open session. K.S.A. 19-212 vests the Board of County Commissioners with broad powers in conducting the business of the county at a meeting. The basic powers of counties are vested in the governing body. The governing body does not legally exist except in an official meeting. When the Board of County Commissioners is not in session, the individual members generally have no more legal authority than do private citizens. An individual county commissioner has no power to act alone.

The county commission has specific duties according to statute and tradition. Its road-related duties are briefly listed below. **Note:** *If a road supervisor performs these duties without knowledge or approval of the county commission, the act is usually without legal force, and could subject the road supervisor to disciplinary or legal action.*

- Establishment of annual budgets and an annual plan for major projects.
- Opening or vacating a road.
- Designating Minimum Maintenance Roads.
- Land acquisition by eminent domain.
- Establishment of regulatory signing such as speed limits and STOP signs.
- Weight limit posting of bridges.
- Approval of inter-local agreements with other governmental agencies.
- Approval of contracts in excess of an amount established in a purchasing policy.
- Opening of bids and approval of construction contracts in excess of \$25,000.
- Approval of a five year plan for federal aid projects.
- Disposal of surplus county property.
- Hiring or firing, if not delegated to a certain county official or human resources department.
- Designating pay grades, raises and annual increases, if not delegated.
- Establishing working hours for county employees.



KEY COUNTY OFFICES

County Engineer and Road Supervisor. All Kansas counties have a road supervisor who is responsible for supervising the county road function. The head of the county road department has various names such as road foreman, road & bridge foreman, road superintendent, highway administrator, etc.

Fewer than 20 counties have county engineers. A County Engineer District, where one engineer can serve as county engineer for more than one county, is allowed by statute, but no such district currently exists. If the county has both a county engineer and a road supervisor the duties are usually divided with the county engineer performing engineering and planning functions and the road supervisor responsible for maintenance and construction activities.

The next page contains a table showing road and bridge related tasks that must be done by a licensed engineer—and those that do not need a license. If you have further questions, call KDOT's Bureau of Local Projects at (785) 296-3861 or KAC's Local Road Engineer, Norm Bowers, at (785) 272-2585.

Public Works Department. Several Kansas counties have created a department of public works, which is under the direction of a director of public works (K.S.A 19-4501). Public works departments may have more responsibilities than the typical highway department, such as collecting and disposing of refuse, maintaining public facilities, and performing inspection services.

The statutes provide for the department to be organized on a professional basis, with the director having “full authority to manage and direct the department and its employees.” The statute further provides that the director shall be under the “general supervision of the board, which should act as a governing body.” This means that the administration of the department of public works is separate from the policy-making function of the board of county commissioners, even though the director of the department serves at the pleasure of the board of county commissioners.

County Clerk. Every county (except Johnson & Wyandotte) has a county clerk, who, in addition to his or her regular administrative duties, is secretary or clerk of the governing body. The county clerk is required to attend the sessions of the board of county commissioners, either in person or by deputy.

The county clerk is the chief accounting officer for the county. The law requires that certain duplicate ledger accounts for all taxing units be kept by the county clerk. The clerk must prepare vouchers and keep a record of bonds and emergency warrants issued by the county, township and school districts. The clerk must keep a record of all special assessments for paving, sewer, and water districts. The county clerk processes all tax-exempt gasoline applications. He or she must keep records of all real estate transfers, review budgets of all governmental units, set tax levies,

compute the tax, and certify the tax roll to the county treasurer for collection. Miscellaneous duties of the county clerk include recording all bonds and insurance policies, maintaining the inventories for all county officials and issuing various licenses and permits.

Duties of the county clerk specifically related to the road and bridge department include maintaining custody of the road record books and packets developed at the time a road is opened. These records are useful if a question arises about road width or location.

It is important to have a good working relationship with the county clerk. As secretary to the county commission the clerk has insights that will be helpful in working with the county commission. Minutes prepared by the county clerk are the official record of the county commission, and how those minutes are written will reflect on your department. Payment vouchers are submitted to the county clerk, and the clerk checks them and then processes them for approval by the county commission.

County Treasurer. The county treasurer has general responsibility for handling the receipts and expenditures of county funds. The county treasurer maintains the official record of expenditures and balances for each fund in the county. The treasurer is the person to ask about cash balance in the road and bridge fund, special bridge fund, special machinery fund, or any departmental fund.

In October of each year, the county treasurer is to provide a review of the receipt and expenditure records and “settle accounts” with the county board of commissioners. Various reports and statements must be prepared for the county and its political subdivisions. The treasurer collects and distributes taxes and other revenues from other taxing units. Some treasurers handle the investment of county funds.

County Attorney / County Counselor. The general duties of the county attorney include to prosecute or defend on behalf of the people all suits, applications or motions, civil or criminal, arising under the law of this state, in which the state or their county is a party or interested party. In addition, the county attorney is to advise the board of county commissioners and county officers on all legal matters.

In counties with a population of less than 70,000 that do not have to have a county auditor, the county attorney must meet with the county board at each session when bills and accounts are presented for the purpose of review as to the liability of the county. There is no prohibition on private practice for county attorneys since most are considered to be part-time, and there is no minimum experience requirement.

The board of county commissioners may appoint a county counselor to advise the county commission and department directors on civil matters and county operations. The county counselor will normally prepare resolutions, file suit for enforcement of county regulations, and prepare contracts. Over a third of the counties in Kansas currently have an appointed county counselor.

The county counselor may provide you legal advice on

Road and Bridge Tasks in Kansas — Engineering Required?

Tasks in this column can only be completed by a licensed engineer or under the direct supervision of a licensed engineer.

Engineering

- Establish standards for improvement projects such as bridges, culverts and roads
- Roadway and crossroad culvert design
- Bridge design for county crew construction
- Size crossroad culverts and bridges
- Bridge inspection and load ratings
- Compute drainage areas and runoff rates
- Determining structural repairs on bridges and culverts
- Drainage and flooding studies

Road and Bridge Construction

- Prepare state & federal permit applications
- Prepare construction specifications
- Construction inspection

Maintenance of Road Network

- Pavement management system

Planning and Zoning

- Review new developments (infrastructure design)
- Review drainage studies
- Standards for new developments

Safety

- Traffic control studies
- Traffic control policies
- Traffic control plans for projects and detours
- Investigate traffic safety related complaints
- Evaluate speed limits

Tasks in this column DON'T require an engineering license.

Administration

- Provide leadership for department
- Budgeting
- Public relations and complaints
- Human resource issues
- Policies with commission

Road and Bridge Construction

- Prioritize projects
- Prepare project requests
- Budgeting for projects
- Cost estimates
- Negotiate consultant contracts
- Review plans
- Right-of-way acquisition
- Utility relocations
- Advertise and lead projects
- Evaluate bids
- Contract administration

Maintenance of Road Network

- Surface distress surveys
- Selection of major projects
- Type of maintenance to perform
- Develop annual maintenance program
- Develop multi-year maintenance program
- Evaluate new products and methods
- Budgeting to accomplish work program
- Prepare equipment specification and bids
- Prepare material specification and bids

Miscellaneous

- Maintenance of survey records
- Emergency response issues
- Surveying (requires a surveying license)

Planning and Zoning

- Public works input on zoning applications

Safety

- Snow and ice control policies
- Accident record keeping
- Recognize roadway safety issues

Source: "A Study of the Duties of a County Engineer in the State of Kansas," by Mulinazzi, Gampa and Russell, Kansas DOT, 2005.

situations that arise related to county business. The county counselor also usually prepares or approves all resolutions, agreements or contracts. In counties that do not have a county counselor, the county attorney may handle these responsibilities, but criminal cases will have higher priority.

County Administrator. Under their home rule powers, several Kansas counties have created the office of county administrator. Typical responsibilities for a county administrator include personnel, budgeting, and general administration, with the powers and duties prescribed by the resolution creating the office. As in the case of a city manager, the administrator reports directly to the governing body; the board of commissioners essentially delegates the powers exercised by the county administrator. County administrators do not normally have authority over elected county officials. In counties with a county administrator, the road department is usually under the county administrator's supervision, which means the road supervisor reports to the county administrator.



ENGINEERING

Need for Engineering. Counties have a need for engineering on a regular basis. County roads are generally travelled at high speeds where signing is critical, and counties have a wealth of bridges and culverts to replace and repair. Despite this need for engineering, fewer than 20 counties have licensed engineers on staff.

Many counties hire a consulting engineer when needed, so it is important to know when their engineering expertise is required. If a road supervisor practices engineering, he or she can be fined and otherwise prosecuted for practicing engineering without a license. Also, if a road supervisor makes a mistake that involves public safety and someone gets hurt, the county has a great exposure to civil liability. For example, if a road supervisor guesses incorrectly on the size of a crossroad culvert, and the road floods and a car gets washed off the road, then the road supervisor may be prosecuted by the Kansas State Board of Technical Professions for practicing engineering without a license, and the county may get sued for damages and injuries due to the flooding.

Refer to page 7 for tasks that need to be completed by a licensed engineer. The information on page 7 is also available on a laminated glove box card for easy reference. Go to <http://www.ksltap.org> and then Lending Library. The card is called "Road and Bridge Tasks in Kansas." It's free to keep.

Selecting a Consulting Engineer. There is no state law that requires professional services, such as engineering, to be bid. Some counties have adopted purchasing policies that may require a specific selection procedure for professional services. Engineers are normally selected based on qualifications, location relative to the agency, and whether

past experience with the engineer has been satisfactory for the type of work to be performed. If you use one or two firms on a regular basis, they will likely provide advice and direction on small items.



TYPES OF ROAD MAINTENANCE SYSTEMS IN KANSAS

Responsibility for maintaining township roads in Kansas can be handled in a few different ways, each bringing pluses and minuses to counties.

In Kansas there are three types of road systems for roads outside cities:

NonCounty Unit Road System. The NonCounty 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; since 1917 the County-Township System is the default 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. Township road maintenance is provided by the townships and is funded from a mill levy on property within the township. Townships do not collect property tax on property within a city.

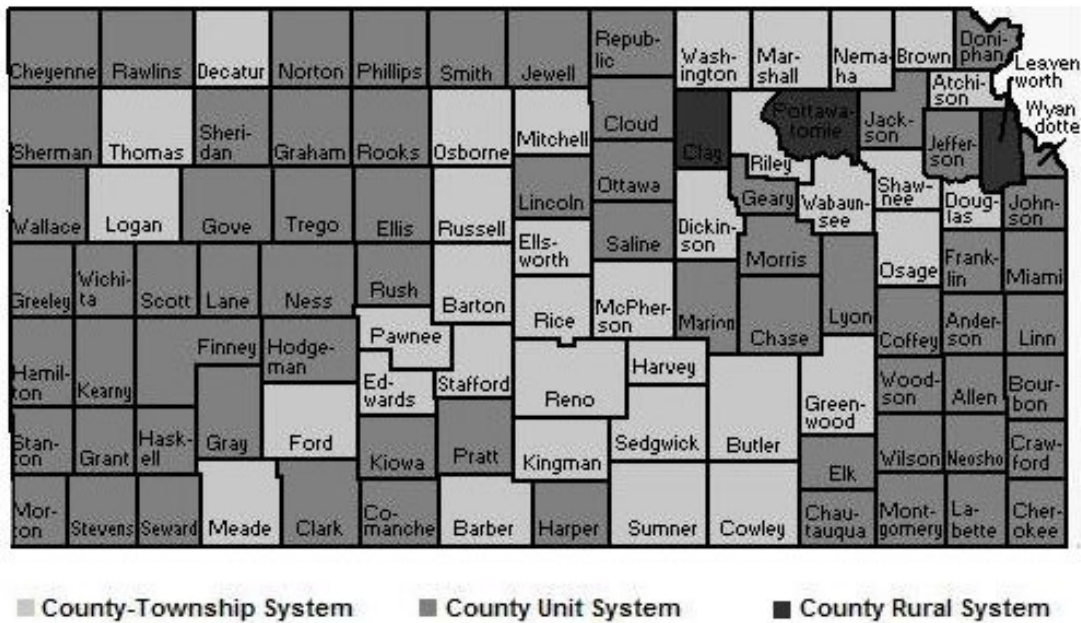
County Unit Road System. In the County Unit Road System the county is responsible for maintaining all the public roads outside the cities. The townships have no road maintenance responsibilities. The County Unit System was authorized by state law in 1917, but it takes action by the county to take over 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 with the County-Township System, as the city residents have to pay taxes for maintaining all the roads in the county, including the old township roads. This road system is authorized by K.S.A. 68-515b.

The last county that converted to a County Unit System was Coffey County in 1979. It appears that there is currently a reluctance to try to convert to a County Unit System as this will increase the taxes for residents inside of cities, and the city residents will not likely vote for the change.

General County Rural Highway System. The General County Rural Highway System, or County-Rural System

Road Maintenance Systems in Kansas, by County As of July 2008



Source: Kansas DOT Bureau of Local Projects

Kansas LTAP Illustration

is similar to the County Unit System in that the county maintains all the public roads outside the cities, and the townships have no road maintenance responsibilities. In this system, however, the county has to have two separate funds, one for the main county roads, and one for what were previously township roads. The County-Rural 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 comes from a mill levy on property within the townships. 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 K.S.A. 68-591.

Note: The above information was taken from a Kansas Local Technical Assistance Program (LTAP) fact sheet that contains interviews with county road officials who have experience under the different types of systems and have advice about their pros and cons. To obtain a copy of the fact sheet, go to <http://www.ksltap.org>, click on "Resources to Download" and look for the fact sheet titled "Maintaining township roads in Kansas—Which system is best?"

■■■■■■■ DIVISION OF MAINTENANCE RESPONSIBILITIES

KDOT. Outside of cities, KDOT is responsible for maintenance of state highways. This includes the STOP signs on side roads approaching the highway, as well as STOP AHEAD signs installed by KDOT. As of 2015 no county has a written agreement on the division of maintenance responsibilities for intersecting county and township roads.

On construction projects KDOT purchases right-of-way in the name of the Secretary of Transportation; this includes the land needed for relocation of county and township roads. This state-owned right-of-way may extend out well past the normal right-of-way line of the highway. KDOT would like the counties to maintain that portion of the county roads outside the normal right-of-way lines, but many counties have been reluctant to do so.

Many counties blade the road and clear snow, but decline expensive maintenance like pavement repair. A new road supervisor should check to see what the practice has been in his or her county.

Cities. Under K.S.A.68-506 (f), the board of county commissioners and the governing body of any city that has



Russell County snowplow, circa 1912.

a population of less than 5,000 is authorized to enter into agreements for the maintenance of streets within cities that form connecting links in the system of county roads or are classified as county Minor Collector roads and highways. The agreements may provide for payments or reimbursements to such cities. In the absence of an agreement or a charter resolution to the contrary, it is the duty of the county to maintain all such connecting links within the cities. While not specifically set out in statutes, most counties maintain the center two lanes of the road, usually 24 ft wide. The city maintains control of the right-of-way, signing, speed limits, and parking regulations, as with any other city street. These responsibilities can be changed by agreement between the city and county. There is no specific statute related to connecting links for cities with a population of more than 5,000. Presumably, maintenance would be the city's responsibility within its jurisdiction.

Under K.S.A. 12-520 (f) a city should annex the entire road when they annex along a road, unless there is a different city on the other side of the road, then they annex to the center of the road. Cities sometimes do not read the statute in the same manner, and road maintenance issues can develop. Usually the county commission can settle this matter, but commissioners are sometimes reluctant to disagree with a city.

KDOT also calls state highways through cities "connecting links." KDOT has a written maintenance agreement with each city in the state. KDOT-city agreements are available on the KDOT website.

Townships. In the County-Township system, the county maintains the county road network, and the township maintains the remainder of the roads outside of the cities. By agreement with the township the county can maintain township roads and charge the township for the cost.

By statute the county is responsible for maintaining

bridges and all culverts with more than 25 sq ft of waterway opening. Appurtenances to the bridge are most likely the county's responsibility, such as weight limit signs, and approach guardrail.

Because a township is not a local authority that is authorized to establish regulatory signing like STOP signs and speed limits, the county then would pass a resolution authorizing specific regulatory signs, and the township would install and maintain the signs. In accordance with K.S.A. 68-5,102 minimum maintenance roads are declared by the county commission who is responsible for installing the signs.

Counties-Adjoining. Many years ago counties split up maintenance on the county line. These maintenance responsibilities have been set by tradition, and seldom is there a written agreement.

Usually one county maintains certain miles of road and the other county maintains the remaining roads. Some counties exercise jurisdiction on their side of the county line for miscellaneous items such as entrance culverts, signing, and mowing. If no written agreements can be found, it is best to check with long-term employees to learn what the understanding is with the adjacent counties. Bridge inspections are usually divided equally on county line bridges. When a bridge is replaced, it is both counties' responsibility to pay part of the cost.



FUNCTIONAL CLASSIFICATION OF ROADS

Functional classification is the process by which streets and highways in a network are ranked according to the type of service they provide. It determines how travel is "channelized" within the roadway network by defining the part that any road or street should play in serving the flow of trips through the network. Functional classification is used in transportation planning, in roadway design, and for the allocation of federal roadway improvement funds.

Certain classification standards are to be established by the county depending on the road system in place in the county. In the County Unit road system, K.S.A. 68-516 designates the road classification types. In counties that have not adopted the County Unit road system, the board of county commissioners, with the approval of the county engineer, is required to classify all roads according to their relative importance in accordance with K.S.A. 68-506.

K.S.A. 68-592 provides for a classification system for any county under the Rural Highway System. K.S.A. 68-1107 provides for the classification of bridges and culverts.

Most main county roads are federal aid routes, and on KDOT-prepared maps they are designated RS Routes. KDOT's Bureau of Transportation Planning has worked with all the counties to designate roads by using the standard federal functional classification. The officially-adopted map of the functional classification for each county is available <https://www.ksdot.org/bureaus/burtransplan/maps/CountyFunClass.asp>.

RS Routes and the federally-classified Major Collectors are the same roads. The RS designation is important because certain federal funds can only be used on RS routes; also, federal Off-System Bridge replacement funds cannot be used to replace bridges on RS routes. [If your county is using KDOT's Federal Fund Exchange Program, federal designation has less meaning. You can spend the state funds that were exchanged for federal funds on any public road.]



INTERLOCAL COOPERATION

Authorization. Kansas local governments have broad legal authority to cooperate on the performance of public functions and services. There are three general types of Kansas statutes on intergovernmental cooperation:

- 1) The Interlocal Cooperation Statute K.S.A 12-2901 allows two or more local units to do cooperatively or jointly that which they are commonly empowered to do.
- 2) The Interlocal Service Statutes K.S.A 12-2908 provides broad authority for any city or county to contract with any other city or county to perform any governmental service, activity or undertaking that each contracting city or county is authorized to perform by law.
- 3) The Functional Consolidation Statute K.S.A 12-3901 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.

Practical Requirements. Some counties cooperate on larger projects with, say, one county furnishing the chip spreader and distributor and the other county furnishing the dump trucks. Many counties help cities within their county in doing work that the cities are not equipped to handle.

K.S.A. 19-4501 et. seq., grants counties with departments of public works broad powers to provide a variety of public works services to local units within the county, under written agreement. Most townships and special districts in Kansas, as well as many smaller cities, do not

have the money, personnel, equipment, or sufficient volume of work to efficiently perform public works maintenance services. A county with a department of public works may enter into agreements with cities, townships, and school districts as well as various special districts on a cost basis. For example, a cemetery district could enter into agreement for county maintenance of their cemeteries. A small city could contract with the county for routine maintenance of its residential streets. It may be possible for the county to take over much of the operation of a special district and small city water and sewer systems.

Accounting. An interlocal agreement needs to be in writing and approved by the board of county commissioners. Even if work is swapped and no money changes hands, an accounting should be made to show that each party contributed a fair amount to the project.

Renting Machinery. The general rule is that a county cannot rent county equipment to private parties or do private work. However, a county can do road clearing for private parties as stated in K.S.A 68-141a. The county is authorized to rent or hire county machinery or equipment to any township or city located in the county.



HELPFUL ORGANIZATIONS

Kansas Department of Transportation (KDOT). KDOT is the state agency in charge of maintenance and construction of state highways. Highways are their major task, but they also have divisions that deal with airports, railroads, transit, and bicycle and pedestrian travel. KDOT headquarters is in the Eisenhower Building at 700 SW Harrison Street in Topeka. KDOT is led by the Secretary of Transportation, who is appointed by the governor.

- **KDOT Districts.** KDOT has divided the state into six districts, each of which includes a group of counties. A map of the districts can be found on the KDOT website at <http://www.ksdot.org>. Construction and maintenance of state highways is generally delegated to the district engineer. The district office also has a materials engineer, maintenance engineer, and construction engineer.

- **Area Engineer.** The district is further divided into areas. Each area is overseen by an area engineer. Within an area there may be a few construction offices that are operated by a resident engineer or a senior engineering technician. The KDOT Web site has a map of each district showing areas and subareas as well as the location of area

The KDOT Area Engineer is aware of upcoming highway projects in the area, and should be contacting the county about upcoming projects, especially those involving detours and hauling of materials on county roads.

offices and construction offices.

The area engineer is aware of upcoming highway projects in the area, and should be contacting the county about upcoming projects, especially those involving detours and hauling of materials on county roads. It is a good idea to make contact with your area engineer on occasion just to let him or her know you are interested in any projects that are in or near the county. The area engineer is also a good contact for signing and maintenance issues related to state highways.

- *KDOT Bureau of Local Projects (BLP)*. Local Projects is in charge of programs that affect cities and counties. Their three major programs are the federal aid program, the Federal Fund Exchange Program, and bridge inspections. The principal contact for the county will be BLP's Local Road Engineer assigned to the county. To obtain the name and contact information for your Local Road Engineer, contact the Bureau of Local Projects in Topeka at (785) 296-3861 or visit their website: click on "Bureaus" on the KDOT home page at <http://www.ksdot.org>.

For more information on funding programs administered by KDOT for local governments, see page 31.

Professional Organizations. There are several organizations that might be helpful to a new road supervisor. The discussion in this chapter covers the essential organizations that most directly apply to a road supervisor.

- *Kansas Association of Counties (KAC)*. The KAC is authorized by state law and has counties as members rather than individuals. Approximately 103 of the 105 counties are members. KAC advances the interests of Kansas county governments and the citizens they serve. KAC provides:

- Legislative representation
- Leadership and professional education
- Resources to address the challenges faced by county government.

The KAC has member organizations called affiliates; they are the County Commissioners, County Counselors, County Clerks, Highway Officials, Noxious Weed Directors, Emergency Management, Emergency Medical Services, Health Departments, and County Appraisers. Each affiliate has a seat on the governing board. The KAC and the affiliates have an annual meeting in November over 2-3 days with subject matter for each affiliate. Each KAC district has a spring meeting; District 3 also has a fall meeting. The districts are the same as the KDOT districts. More information about KAC is available on their Web site at <http://www.kansascounties.org>.

- *Kansas County Highway Association (KCHA)*. KCHA consists of county engineers and road supervisors of Kansas counties, and serves as KAC's "Highway Officials" affiliate. KCHA is an association organized to facilitate communication, interaction, information transfer, and educational opportunities for county engineers, highway administrators, and road and bridge officials in the state

of Kansas. Membership is for individuals and more than one person can be a member from a county. KCHA has a two-day Spring meeting in May that specifically deals with topics related to county road work. Some KAC districts have monthly or bimonthly lunches to keep current on the field. Dues statements are mailed out in January. More information is available on the KCHA Web site at <http://www.kansascountyhighway.org>.

- *National Association of County Engineers (NACE)*. NACE is a national organization with membership open to county road officials. NACE is an affiliate of the National Association of Counties (NACo).

NACE has four primary objectives:

- To advance county engineering and management by providing a forum for exchange of ideas and information aimed at improving service to the public.
- To foster and stimulate the growth of individual state organizations of county engineers and county road officials.
- To improve relations and the spirit of cooperation among county engineers and other agencies.
- To monitor national legislation affecting county transportation/public works departments and through NACo, provide NACE's legislative opinions.

NACE has an annual national three-day meeting that is very informative. Many Kansas counties are members of NACE and attend the annual meetings when at a convenient location. An option to join and pay NACE dues is included with the KCHA dues statement mailed in January. More information is available about NACE on their Web site at <http://www.countyengineers.org>.

- *APWA Chapters in Kansas*. Both the KC-Metro and Kansas Chapters of the American Public Works Association provide networking and information-sharing through chapter meetings, Spring meetings, and their equipment rodeos. The Kansas Chapter also is a partner, representing cities, in the Kansas Road Scholar Program. Learn more at <http://kansas.apwa.net> and <http://kcmetro.apwa.net>.

■ ■ ■ ■ ■ TRAINING

A well-trained supervisor and staff saves time and money. It makes a huge difference when everyone on the staff knows how to do their jobs safely and efficiently. Following are a few programs that provide training on local road agency management, operations, and safety.

Kansas Roads Scholar Program. This program provides training to increase knowledge of road maintenance procedures and improve technical, supervisory and managerial/administrative skills. Kansas LTAP administers this program for the KCHA and APWA-



www.istockphoto.com

Kansas has several opportunities for training and professional development for road supervisors and their staff. Some workshops, especially with the Kansas Roads Scholar Program, are held at several locations across the state.

Kansas Chapter. Other partners include the Kansas Association of Counties and KDOT.

Kansas LTAP and the Kansas Association of Counties provide the bulk of the training for the Kansas Roads Scholar Program. Contact: Kristin Kelly at (785) 864-2594 or kbkelly@ku.edu. Download a brochure at <http://www.ksroadsscholar.org>.

Kansas LTAP. *The Kansas Local Technical Assistance Program* provides training and assistance to road and bridge departments. Services include training workshops held across the state, a quarterly technical newsletter, one-on-one technical advice, a lending library of training programs on video, road and bridge related handbooks and manuals, and Web-based resources. Most of these services are low-cost or free.

KS LTAP administers the Kansas Roads Scholar program mentioned above, and participates in planning the annual “MINK” local roads regional meeting each Fall. For more information visit <http://www.kutc.ku.edu> and <http://www.ksltap.org>.

Kansas LTAP is housed within the Kansas University Transportation Center (KUTC).

TASK. *The Traffic Assistance Services to Kansas (TASK) Program* is funded by the Federal Highway Administration and KDOT and is operated jointly by The University of Kansas and Kansas State University. The program has provided traffic safety training around the state since 1980. Topics include the MUTCD, traffic engineering for technicians, geometric design for very low volume roads, and others. Some of the TASK courses are offered as part of the Kansas Roads Scholar Program. Visit <http://www.dce.k-state.edu/conf/task/>.

Kansas DOT. Some training for KDOT employees is available to local agencies, if space is available. An example is KDOT’s erosion control workshop. Courses are advertised through Kansas LTAP. For more information on these offerings, contact Susan Barker, KDOT Tech Transfer Engineer, at (785) 291-3847 or SusanB@ksdot.org.

KDOT’s Bureau of Local Projects holds training in how to take advantage of local funding opportunities, and how to comply with federal and state regulations associated with those funding programs. Classes are advertised through Kansas LTAP, at their website (<http://www.ksltap.org>) and in the LTAP Newsletter.

KDOT also periodically sponsors an equipment expo that showcases equipment, apparel and supplies for road and bridge work. Equipment safety workshops are offered during the event. Local government agencies are welcome to attend. This is also advertised through LTAP’s online training calendar.

National Work Zone Safety Information

Clearinghouse. Provides streaming videos, written materials and webinars on setting up work zones and safety practices for crews. <http://www.workzonesafety.org>.

American Traffic Safety Services Association. ATSSA provides work zone safety training around the country. Sometimes they schedule classes in advance, but most of their training in Kansas is done by invitation from a local government or contractor. The local host typically must guarantee a certain number of attendees for ATSSA to come and teach the course. Visit <http://www.atssa.com>. Click on Education and then Courses.



BUDGETS

Calendar Year Budgets. In Kansas government budgets are for a calendar year. Proposed budgets are prepared during the summer so the entire county budget can be approved by the county commission and taxes can be calculated for the tax statements mailed out in November.

Funds. The building block for county budgets is the fund. Each fund has its own budget. A fund acts as a municipal accounting “checkbook.”

Kansas laws authorize counties to establish a variety of other funds to account for specific activities and to levy taxes therein for a variety of purposes. The money in the “checkbooks” of other funds can be used only for specific purposes and are subject to special limitations. The financial records of the county clerk and county treasurer show the receipts and expenditures of each fund separately. However, the county’s bank account does not show the funds separately; it is immaterial to a depository bank how many

funds the county has or what the balances are in each fund.

The Kansas Budget Law stipulates that, with few exceptions, the published budget establishes the maximum expenditures that can be incurred in the fund, within the fiscal year (calendar year), and no amount of any fund can be diverted (i.e. transferred) to another fund except as provided by law. For example, monies raised from the Noxious Weed Tax Levy can be used only for noxious weed control purposes.

In Kansas, governments cannot exceed the annual budget except for a few reasons:

- Reimbursed expenses
- Disaster payments
- Bonds
- No fund warrants
- Lease purchase agreements.

It is usually necessary to check with the auditor or budget director to determine if a budget amendment is required.

Within each fund are various line items, such as salary, rent, materials, fuel, etc. These line items total up to the budget amount of the fund. The costs charged against budgeted amounts in line items can be exceeded or under-run, but the total budget amount of the fund cannot be exceeded.

State law requires that each tax fund have a balanced budget. This means that expenditures and revenues must be equal except for budgeted carryover. Certain reimbursed expenses, federal grants, fees, etc, that are not budgeted may be used to reduce the expenditures for that particular fund. Certain special funds may carry funds over to the next year and are not required to have a balanced budget; these funds are discussed later in this section.

Ultimate responsibility for adopting county budgets rests with the board of county commissioners. However, certain budget development and analysis responsibilities and tasks can, at the discretion of the board, be delegated to other county officials. The commissioners usually expect department directors to prepare budget proposals for the funds for which they are responsible. Responsibility for preparing a single budget recommendation or proposal, or for aggregating and summarizing budget requests from department directors, is often delegated to the county clerk or county administrator.

Capital Budgeting. A capital budget is a plan of proposed capital outlays and the means of financing them during the current fiscal year. It is usually a part of the annual budget. If a county has a multi-year Capital Improvement Program (CIP) process in place, the capital budget is the first-year segment of the long-range plan. There is no legal requirement to develop and adopt a capital budget, but it is a good planning and management tool.

Budget Administration. Most counties make the department director responsible for administering the budgets for the various funds used in his or her operations. For the road supervisor this is the Road & Bridge Fund and any related special funds that have been established. Usually line items can be exceeded or under-run without approval of the county commission, but it is a good idea to check if the department directors in the county have been given that authority.

When the fund's budget is exhausted, further expenditures must cease, so the department director has to plan and schedule the work to see that the budget is not exceeded. Salaries are fairly constant throughout the year, with a few spikes in overtime during the summer and winter, so they are easy to budget. Project expenditures are larger during the construction season, and more care and planning is needed to see that funds are available to pay for the needed materials.

Cash Basis Law. The Kansas Cash Basis Law prohibits counties from creating any financial obligation (indebtedness) unless there is money on hand in the proper fund to pay for it. This affects budget administration in two ways:

1) Cash is deposited into the various county funds throughout the year. Generally 45 percent of the property tax revenue is deposited in the various funds in January, with the remainder at various times throughout the year. Special City County Highway Funds and sales tax revenue are deposited throughout the year as received. So large expenditures early

in the year may deplete available cash. Cash may also be an issue if revenue is less than expected. So cash has to be monitored as well as the budget.

2) The Cash Basis Law also affects purchases toward the end of the year. Supplies cannot be ordered in December and billed in the next year; cash needs to be available when the order is made. The county auditor will sometimes check expenditures in

January to see if they should be charged back to the previous budget year. These audit adjustments can result in exceeding expenditures in the prior year.

If a cash carryover is budgeted, it is necessary to carry over that amount or the next year's budget will be shorted. Budgeting a large cash carryover is not a common practice. There is an exception for lease-purchase agreements in K.S.A. 10-1116 (b).

The primary state revenue sharing program for the maintenance and repair of local county roads and city streets is the Special City and County Highway Fund (SCCHF).

Budget Amendments. As mentioned earlier, budget law prohibits the creation of indebtedness against any fund over the budgeted amount for the current year. An emergency arises when unplanned expenditures will not fit within the budget. If unappropriated non-property tax revenue is available to cover the additional budget needs, the budget can be amended by the Board of County Commissioners through a process requiring publication of a notice to the public, a public hearing, and filing of the amended budget with the County Clerk. If cash is not available to cover emergency

needs, the county may apply to the State Board of Tax Appeals for authority to issue no-fund warrants. If granted, budget authority to spend the proceeds of the no-fund warrants is also increased automatically, meaning the county does not have to amend its budget. The county commission does not normally tolerate appointed department directors to exceed their budgets without prior approval.

Road & Bridge Fund. The main fund for the road department is the Road and Bridge Fund. This fund has a 10 mill levy limit. Typically sales tax and other revenues are deposited in this fund. The Road and Bridge Fund is a normal budgeted fund, so both the budget and cash available cannot be exceeded without a budget amendment. Unobligated budget does not carry over to the next year. Cash does carry over to the next year, but usually cannot be spent unless the cash carryover was budgeted.

Special Funds. Several statutes provide for reserve and special funds. These special funds carry over cash from year to year. The purpose of the special funds is to build up cash to make larger purchases. Unlike most other funds, unexpended money in a reserve fund does not have to be rebudgeted or reappropriated annually. Expected expenditures and revenues for the fund are included in the published budget, but are not limiting. Here are some examples:

—*Special Bridge Fund.* Special Bridge Fund. K.S.A. 68-1135 provides for a special fund for bridges and culverts with a maximum levy limit of 2 mills. Approach grading, engineering, right-of-way acquisition, and other project-related costs may be paid from this fund. In making the budget, the amounts credited to, on hand, and expended in the budget are shown for information only.

—*Special Machinery and Road Building Fund.* A Special Machinery and Road Building Fund is authorized by K.S.A 68-141f & g. A Special Highway Improvement Fund is authorized by K.S.A 68-589 and K.S.A 68-590. The commissioners, by resolution, can transfer from the Road and Bridge Fund an amount not to exceed 25 percent of the road and bridge budget. The Special Machinery and Road Building Fund is more flexible, as it allows for the purchase of machinery.

—*Special Equipment Reserve Fund.* K.S.A. 19-119 permits counties to establish this reserve fund to finance the acquisition of machinery, equipment, motor vehicles, and even computer equipment. By resolution the county commission can transfer funds from any fund in the county, and this fund can purchase equipment for any county department. Because this is a county-wide fund, it is not usually administered by the road supervisor.

Year-End Considerations. The Road and Bridge Fund does not carry over to the next year, so funds not expended will not be available next year. The cash left in the fund will be transferred forward, but the budget authority will not. Most counties transfer excess funds to the Special Machinery



Most counties make the department director responsible for administering the budgets for the various funds used in his or her operations. For the road supervisor this is the Road & Bridge Fund and any related special funds that have been established.

and Road Building Fund. This transfer takes some advance planning and a resolution by the county commissioners prior to the end of the year.

Payments. A “claim” is a demand for payment. The general statutes on claims require that before any warrant or warrant check is authorized by the governing body, there must be presented in writing a document with a full account of the items or services furnished to the county. A vendor’s usual statement of account is sufficient to constitute a proper claim for payment, if it is itemized. It need not be sworn-to or certified, or even signed.

Vendors’ bills come in different styles, shapes and sizes. Internal financial controls require the information to be duplicated on a standard internal document (commonly called a voucher) to facilitate an audit and show approval of payment. This voucher may be considered the legal “claim” to be presented on behalf of the vendor. There is no reason for the vendor to sign (or even see) the voucher if it is based upon a vendor’s statement detailing a full account of the charges. The vendor is not required to certify that a claim is due and unpaid.

Paying a claim out of the wrong fund is the same as making an illegal transfer of money from one fund to another. For instance, payments from the Special Bridge Fund should be related to a bridge or culvert. It would not be appropriate or legal to pay for a purely road project out of the Special Bridge Fund.

REVENUE

Property Tax. Any discussion of local government finances requires an understanding of property tax. Property tax has long been the principal revenue source used to finance public services in Kansas. The ad valorem tax is a general tax on all real and tangible personal property, based on value.

Real and personal property are taxed unless specifically exempted—either in the Kansas Constitution or by statute. A tax bill is determined by multiplying the assessed value of a taxable piece of property by a composite rate. For example, if the total tax rate is 35 mills (\$35 per \$1,000 of assessed value) and the assessed value of the property is \$5,000, the tax would be 35 x 5 or \$175.

Motor Vehicle Taxes. Local units of government receive significant revenue in addition to general property taxes from a tax on motor vehicles and from a tax on recreational vehicles. These vehicles are excluded from the general property tax assessment roll. Vehicle owners pay special taxes at the time the vehicles are registered.

County-Wide Sales Taxes. The principal non-property tax revenue source available to both counties and cities is local sales tax. Revenue from a county-wide sales tax is distributed to the levying county and cities therein by the state Department of Revenue.

Revenue from a county-wide sales tax not already earmarked for a dedicated purpose is apportioned among the county government and cities within the county, with 50 percent in proportion to property tax levies and 50 percent in proportion to urban and non-urban population. However, there are several exceptions to the distribution formula provided in the statute.

Special City and County Highway Fund (SCCHF). The primary state revenue-sharing program for the maintenance and repair of local county roads and city streets is the Special City and County Highway Fund (SCCHF). The two major sources of revenue for the SCCHF are the county's percentage of the state's motor fuel tax (primary source, approximately 90 percent) and the State's motor carrier property tax (secondary source, approximately 10 percent). In the county budget these funds may not have these exact labels; they may be called state funds or gas tax.

The current distribution for state motor fuel tax is 66.37% to the State Highway Fund and 33.63% to the Special City and County Highway Fund. This distribution recognizes that fuel is consumed when driving on county roads and city streets. The counties and cities receive 33.63% of fuel tax; however, 43% of vehicle miles travelled is on the local road system. Since 2010, the state legislature has diverted the motor carrier property tax portion of the SCCHF to fund state operations.

PURCHASING

General. The board of county commissioners has the final responsibility for purchases made on behalf of the county. Many counties have adopted purchasing policies and some even have a purchasing director or a purchasing department.

County purchasing policies are more detailed than state laws. Counties without purchasing policies will have a purchasing limit for each department director, and any purchases exceeding the limit must be approved in advance by the county commissioners. For road departments the purchasing limit is fairly high for routine items.

State law requires bidding on construction work, but not on the purchase of materials and equipment. County purchasing policies usually specify procedures for the purchase of materials and equipment based on the expected purchase price. More formal procedures are required for larger purchases. Some counties favor local vendors, both because they are local taxpayers and because of convenience. In all purchasing it is imperative to avoid favoritism and the appearance of favoritism.

Purchasing Professional Services. Professional services are exempt from bidding requirements. Professional services include legal services, accounting, architecture, land surveying, and engineering. Many counties get proposals from a few firms that have performed adequately in the past. For small projects a professional could be hired on an hourly or lump-sum basis. Larger projects such as road or bridge projects are usually a lump-sum type of contract. Bidding for professional work is discouraged as the cheapest engineer may not be qualified to do the work and may not provide a quality product.

Purchasing by Bids. Although there is no uniform state law that requires counties to make purchases of materials or equipment using bids, most counties consider it to be a good business practice. Competitive, sealed bidding is generally considered the preferred method of procurement. Competitive bidding is designed to guard against favoritism and corruption, and secure the best work or supplies at the lowest price practicable. It is enacted for the benefit of taxpayers and not for the benefit or enrichment of bidders.

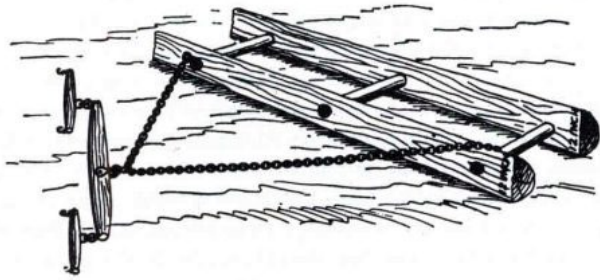
The competitive procedures most commonly used by local governments in contracting for goods and services fall broadly into three categories:

- 1) Sealed bidding for a single purchase;
- 2) Sealed bidding for a Term & Supply Contract;
- 3) Competitive quotations, either by telephone or written.

Single-purchase bids are usually for an item or items to be delivered at one time. If additional items are needed at a later date, a rebid is usually necessary unless there are terms in the contract to allow increasing the order at a later date.

A Term and Supply Contract is for an estimated amount of a product for a certain time period. The bid is on a unit price, and payment is made as the product is used.

How To Make Good Dirt Roads



The Split Log Drag

Easy to make—easy to run—and which, rightly used, convinces the unconvinced, converts the unconverted, makes rough roads smooth, and soft roads hard. A simple implement made on the farm, which will transform the roads of the corn and grass belt.

National Humanities Center

1905 instructions for farmers to build a road drag.

Rock, asphalt and fuel are usually purchased in this manner.

Quotations may be submitted in writing or over the telephone. If telephone quotes are allowed they should be documented on a standard form for reference, should there be an inquiry.



CONSTRUCTION PROJECTS

Bidding Threshold. K.S.A. 19-214 requires that all contracts in excess of \$25,000 for the construction of roads, bridges and county buildings be awarded, by public letting, to the lowest and best bid. Under Section (b) of the statute, professional services are exempt from these bid requirements. If the amount is less than \$25,000 the normal county purchasing policies would apply.

Bid Procedure. Kansas does not have a uniform state statute that specifies the manner in which counties prepare specifications and contract documents for construction bids. Some counties have their own procedures set out by resolution or purchasing policy.

When bidding is required there are state laws on proper public notice, bonding and award of the contracts. Contracting for roadwork is detailed in K.S.A. 68-521 and

contracting for bridgework is detailed in K.S.A. Chapter 68 Article 11. K.S.A. 68-704 also requires bidding for road improvements in benefit districts. Unless the county has an engineering staff, it will be necessary to contract with a consulting engineer to prepare the plans, specifications and contract document for construction contracts.

Road Construction by County Crews. Generally, K.S.A. 68-520 authorizes county roadwork to be done by contract or with county crews. It says the board of county commissioners in constructing, surfacing, repairing, or maintaining county roads, may:

- 1) Let contracts for all or any part of such work;
- 2) Buy the materials and contract all or any part of the labor;
- 3) Purchase or rent machinery and other equipment and employ labor, under the direction of the county engineer.

The Kansas Supreme Court in *Robertson v Labette Co.* ruled that the county has authority to construct roads without letting contracts. The court said:

“That last quoted section of the statute [K.S.A. 68-520] gives to the board of county commissioners authority to do the work of constructing a road without letting a contract for such construction. The state impliedly [sic] gives to the board of county commissioners authority to all things reasonable necessary to be done when the county itself employs the labor and buys the machinery with which to do the work of constructing a road. In constructing a hard-surfaced road, it is necessary to use heavy machinery and employ a large number of men.”

County Bid Requirements Suspended for Disasters. The provisions of K.S.A. 19-214 et. seq. and K.S.A. 68-521 allow suspending the bidding requirements for bridge and road improvements in disaster situations.

The following prerequisites suspend the public bidding requirements:

- 1) The bridge or road must have been damaged or destroyed because of a disaster;
- 2) The governor has declared the county or part of a county as a disaster area;
- 3) The board of county commissioners finds that a hardship will result if repair or reconstruction is not done immediately;
- 4) The board of county commissioners has obtained an estimate of the cost from the county engineer, or if there is no engineer, then from the Kansas Department of Transportation; and
- 5) The contract is awarded within 60 days of the governor's declaration.



DISPOSAL OF SURPLUS PROPERTY

Disposal of County Property. If the county wishes to sell property, it cannot be sold without the unanimous vote of the board of county commissioners unless the county has five commissioners, then four out of the five can pass the measure.

State statutes provide detailed requirements on the disposal of county property in K.S.A. 19-211(a) & 19-211(b). Usually the county clerk or county counselor handles the legal details.

It is more complicated to dispose of county property than it is to purchase property. Many people have gotten into trouble by selling items such as used culverts, bridge plank, used steel, and other seemingly almost valueless property. Remember, it is not your property and you cannot sell it.

Trade-in Procedure to Dispose of County Property. The Attorney General has opined (92-110) that the county can dispose of property valued at less than \$50,000 by trading in the property. Trade-ins are specified in the bid documents and are allowed for in the bid price.



PERSONNEL POLICIES & PROCEDURES

Personnel issues can be quite complicated. The information in this section is for general information only, as it applies to county employees. More detailed information is available in KAC's *County Commission Desk Book*, personnel policies adopted by the county, and various training available.

Improper or illegal handling of personnel issues subjects the county to legal liabilities. When in doubt on any action, check with persons in authority that have had experience with similar issues.

Personnel Policies. The board of county commissioners has the power to establish personnel policies and procedures for county employees. Most counties have adopted personnel policies, and if such policies have been adopted, the employees have a right to expect that the policies will be followed. It is important that new road supervisors become familiar with the personnel policies as soon as possible.

Types of Employer-Employee Relationships. There are three types of employer-employee relationships that characterize local government in Kansas:

- 1) A relationship controlled by the employment-at-will doctrine;
- 2) A relationship that is controlled by a negotiated labor agreement; and
- 3) A relationship that is controlled by the local civil service system.

Most counties have employees at will. Although employees may be terminated at will, they must not be terminated for illegal reasons. This is described in more detail below, in the paragraph on Discharge of Employees.

Employee Organizations. The Public Employer-Employee Relations (PEER) Act is an optional law that applies only to those counties that elect to come under the Act. (Counties can also decide to withdraw from this Act.) The law authorizes the county, as an employer, to recognize certain employee organizations (sometimes labor unions) for meeting and conferring on various conditions of employment such as salaries, hours of work, holidays, retirement benefits and grievance procedures. The law also prohibits strikes by public employees. The Act is administered by the state public employee relations board.

Under the home rule power of counties, counties can recognize and negotiate with employee organizations. There are several local employee organizations active in Kansas. A few counties have formal or informal agreements with employee organizations.

Employee Oaths. Before commencing the duties of office, every county officer and employee must subscribe in writing to an oath of office (K.S.A. 75-4308). Any officer or employee who fails to execute the oath is not to receive payment for work until the oath is executed.

Residency Requirements. There is no general or uniform state law setting residency requirements for county employees. Some counties fix a residency requirement for employees by resolution or it is incorporated into the personnel policies.

Discharge of Employees. State statutes or personnel policies will generally delegate authority to specific county officers to discharge employees. Road supervisors should be aware of the complexity of the law regarding terminations and should consult with the county counselor and human resources director prior to terminating an employee. The courts have consistently held that, besides specific federal anti-discrimination statutes, the due process clause of the 14th Amendment to the U.S. Constitution may provide certain procedural protection to public employees. In instances where state law, county resolution, county policy, or union agreements create for an employee a "property interest" in continued employment (i.e., employment conditions where an employee shall only be discharged "for cause"), the U.S. Supreme Court has held that the employee has a Constitutional right under the due process clause to:

- 1) Oral or written notice of the charges against the employee;
- 2) An explanation of the employer's evidence; and
- 3) An opportunity to present his or her side of the story before being discharged.

Pre-termination due-process procedures may need to be followed up by a post-termination hearing



Mealtimes of 30 minutes or more are not usually paid time. However, if an employee is not completely relieved of duty during mealtime, a question arises about whether this should be paid time.

complete with a right to counsel and to cross-examine witnesses.

General rule: If there is no contractual relationship between the employer and the employee that specifies the terms and duration of employment, the employment can be terminated at will by either the employer or the employee.

Veterans Preference. A veterans holding an honorable discharge from the military service during times of war or military action must be given first choice for appointments and employment when applying for an office or job that is vacant. If called to active duty while an employee of the county, the veteran may return to his or her job at completion of active duty.

Salaries and Wages. There is no general state statute regarding the salaries of county appointed officers and employees. In larger counties, the pay plan is adopted by the county commission and administered by staff. In smaller counties, the county commission has to approve any changes in salary.

Overtime is paid for over 40 hours worked in any work week in accordance with the federal Fair Labor Standards Act (FLSA). The work week is designated by the county. Some counties use compensatory time instead of overtime, and have established procedures for tracking and using compensatory time.

Salaries frequently are set by resolution or as part of a pay plan or other administrative device sanctioned by county resolution. The Kansas Association of Counties conducts a County Officers Survey to determine salary ranges for member affiliates. The survey covers common county positions and it analyzes data by position and size of a county. The survey is available at the KAC Web site.

Legal Holidays. There are 10 holidays designated by state law, and additional holidays designated by federal law. The fact that a certain day is declared a legal holiday by state or federal law is not binding on a county. The paid holidays for county employees are designated by the county commission each year by resolutions.

Social Security. All Kansas counties are under the federal Social Security program.

Workers' Compensation. Workers' compensation is mandatory for all county employees, including volunteer law enforcement officers, volunteer fire fighters, volunteer ambulance attendants, and volunteer emergency medical technicians.

A county may be self-insured. The law requires that all on-the-job or job-related injuries that require medical care must be reported to the state Division of Workers' Compensation on standard forms. Many counties have incident report forms for minor incidents that do not require medical care at the time, just in case medical care may be required at a later date.

Unemployment Compensation. County employees are covered under the state's employment security law.

Retirement Benefits. All Kansas counties are under the Kansas Public Employees Retirement System (KPERs). Employees become eligible for KPERs after one year of employment. A specific percentage is deducted from the gross salary, and a specific percentage is provided by the employer. KPERs has several reference publications available online at <http://www.kpers.org>.

Other Employee Benefits. Almost all counties grant various benefits for regular employees. Many counties have established formalized plans for employee benefits. Common benefits include paid vacations, holidays, and sick leave. Other benefits not discussed earlier in this chapter include group life and accident insurance, deferred compensation, and flexible spending ("cafeteria") plans.

Federal Fair Labor Standards Act (FLSA).

- **Fundamentals.** County employees are covered by the FLSA. The FLSA covers minimum wage, overtime, child labor, equal pay for equal work, on-call time, and compensation for mealtime. Executive and professional positions are usually exempt from the overtime and on-call pay requirements.

Overtime must be compensated at a rate of at least 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours in any 168 consecutive hour period, which is considered the work week. Overtime must be computed on a weekly basis but it does not have to be paid weekly. Local governments are permitted to give their employees compensatory time off instead of immediate overtime pay in cash. The rate is based on not less than 1.5 for hour of overtime worked, up to a maximum of 240

hours, and up to 480 hours for public safety employees.

Other special wage and hour rules apply to public safety employees, persons employed for two jobs and for volunteers.

Kansas wage payment law is more comprehensive than the FLSA in determining the duties of employers to pay certain wages and benefits to their employees. The Kansas Wage Payment Act states that employees must be paid at least once in the calendar month; the end of the pay period cannot be more than 15 days from the normal payday; and if the employee is terminated, the employer is not required to pay the employee until the next regular payday.

- *FLSA Child Labor.* The employment of minors under the age of 18 in a hazardous occupation is unlawful. Children 14-16 years old may be employed outside school hours in certain occupations. Most counties have a minimum age requirement of 18 for working for the road department.

- *FLSA Break Time.* Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid as working time. They must be counted as hours worked. Breaks are not a requirement of state or federal law, and are sometimes omitted when a break is not possible for operational reasons, such as during a concrete pour or chip sealing.

- *FLSA "On-Call" Time.* Some road departments have certain persons on-call in case of emergency. It is important not to place too many restrictions on the on-call person or it might become time for which compensation is required. Whether on-call time counts as paid time depends on how much freedom an employee has while on call. If an employer imposes very few restrictions on an employee while on call, the time does not count as hours worked. But if an employer imposes many restrictions, the time may count as paid time. Some relevant factors include geographic restrictions, how much time an employee has to report when called, how many calls an employee actually receives, and the ability to trade on-call duties. Generally a requirement to be available by phone, not to drink alcohol while on call, and to report within one hour after receiving a call is not unreasonable. Generally only a few people are placed on-call outside of normal working hours. However, when a winter storm is expected, an entire shift may be put on-call.

- *FLSA Compensation for Mealtime.* Mealtimes of 30 minutes or more are not usually paid time. However, if an employee is not completely relieved of duty during mealtime, a question arises about whether this should be paid time. For instance if a person sits at his desk while he eats lunch and answers the phone and takes radio messages, this may be paid time. To avoid misunderstandings that might develop over a period of years, some counties require their employees to leave their desks during the lunch break.

Employment Discrimination.

- *Discrimination in Hiring and Promotion.* Both

federal and state laws make it unlawful for an employer to discriminate in the hiring, discharging, or promotion of any person because of race, color, sex, national origin or ancestry, religion, or physical disability. There are also federal and state laws that prohibit employment discrimination because of age. Federal law is enforced by the Equal Employment Opportunity Commission (EEOC).

- *Resolution and Enforcement Agencies.* Legal cases arise where the employer has violated both federal and state discrimination statutes. If the discrimination arises from a violation of a law that falls under Acts regulated by the EEOC, the EEOC is explicitly authorized to cooperate with the state agency in charge of regulating the action under state law. Allegations of violations of certain Acts authorize the EEOC to allow the state agency to try to resolve the conflict before the EEOC intervenes. If a complaint is filed, the enforcement agency will be the Kansas Commission on Human Rights or the EEOC.

- *Employee Constitutional Rights.*

County employees have rights as citizens that are guaranteed by the U.S. Constitution. Violations of those rights (and liability for counties) most frequently arise in the First Amendment right to free speech, but can also involve invasion of privacy, due process, search and seizure, etc.

The firing of non-policy-making public employees solely because of their political beliefs violates the First Amendment. Additionally, a public employer cannot discipline or discharge a public employee if the action is based on the employee's speech regarding a matter of public concern. Discharging employees because they have filed workers compensation claims or for "whistle blowing" are practices forbidden by the courts.

- *Kansas Act Against Discrimination.* Besides federal laws that prohibit discrimination based on a disability or disabilities, all counties are subject to state statutes having similar prohibitions against employment discrimination. The Kansas Act Against Discrimination makes it unlawful for an employer to discriminate against an individual in the hiring, termination, or in other terms and conditions of employment based on that person's race, religion, color, sex, physical disability, or national origin. The Kansas Act Against Discrimination defines an employee as mentally or physically handicapped when the person is substantially limited in performing life's major activities.

- *Americans With Disabilities Act.* The Americans With Disabilities Act of 1990 (ADA) prohibits discrimination against people with disabilities. A person with a disability is defined as:

- 1) A person with a physical or mental impairment that substantially limits the amount of life activities that person can be engaged in;
- 2) The impairment must be recognized; and
- 3) The person must be regarded as having that impairment.

The employer must provide reasonable accommodations for handicapped or disabled employees if these

If an employer places many restrictions on an employee who is on-call, the time might count as paid time.

accommodations do not provide an undue financial hardship on the employer. ADA compliance is a developing area, and usually expert advice is needed if there could be an ADA issue.

- *Age Discrimination in Employment Act (ADEA)*. The federal Age Discrimination in Employment Act of 1967, as amended, prohibits employment discrimination because of age, with certain exceptions, against persons over 40 years of age. Another provision of the Act is that employers that provide health insurance for employees and their spouses below the age of 65 must also provide health insurance for their employees that are over the age of 65.

- *Kansas Age Discrimination in Employment Act*. Kansas also has a statute that prohibits employment discrimination based on age. The Kansas Age Discrimination in Employment Act (K.S.A. 44-111) administered by the Kansas Commission on Civil Rights, makes it unlawful for an employer to discriminate based on age if the person the age of 40 or more.

Immigration Reform and Control Act. The federal Immigration Reform and Control Act (IRCA) was enacted to help “control America’s illegal immigrant problems.” The Act imposes new responsibilities on all counties and other local units of government. In brief, employers must verify the work status of all new job applicants. The prospective employee must complete the first part of a Form I-9, furnished by the Immigration and Naturalization Service (INS), while the employer completes the employment verification part of that form.

Family Leave and Medical Act. The Family and Medical Leave Act of 1993 (FMLA) 29 USC 2611 et. seq. provides that an eligible employee of a covered employer may take up to 12 work weeks unpaid leave for certain family and medical needs in any 12-month period and his or her job will be protected. This leave may run concurrently with any other paid or unpaid leave a county may offer. Public employers are specifically mentioned in the Act. However, the county must employ 50 employees in order for the Act to apply. Compliance with this law is somewhat complicated, especially for intermittent leave and chronic conditions. There is usually someone on county staff that helps road supervisors administer the FMLA, and is available to answer questions.



KANSAS OPEN RECORDS ACT (KORA)

The Kansas Legislature has declared that it is the public policy of Kansas that public records should be open for inspection by any person, unless a law closes the record to the public. The presumption is in favor of disclosure, and the KORA is to be liberally construed. This is a fairly complicated area, and each county has an open records official called a Freedom of Information Officer (FIO) with

whom you should consult if you receive an open records request. When an open record request is made, the county has three days to furnish the records.

Public Record Defined. A “public record” is defined by statute as “any recorded information, regardless of form or characteristic, which is made, maintained or kept or is in the possession of any public agency.”

The KORA excludes certain documents from the definition of public record, including records owned by private persons that are not related to a governmental function, and personnel files and employers’ records regarding individually-identifiable contributions made on behalf of employees for worker’ compensation, social security, unemployment insurance, or retirement.

The Kansas Attorney General has stated that a public agency is not required to create a document or prepare a document in a certain form for someone requesting particular information. The court has further said that deleting confidential information or extracting requested information from a public record does not constitute creating a new record.

Access to Records. Each county, and every other public agency in Kansas, is required to designate a local Freedom of Information Officer (FIO). The FIO has several statutory duties. These include 1) prepare and provide educational materials concerning KORA, 2) assist the public in resolving KORA disputes, 3) respond to any questions about KORA, and 4) prepare a brochure about KORA. The FIO is not the same as the official custodian of the records involved.

Exceptions. The presumption is that all records of a public agency are open to the public. However, the KORA provides that if a federal law, state law, or Supreme Court Rule mandates that a record be kept confidential, that record is not subject to KORA disclosure. For example, tax returns, ballots, expunged criminal records, and child abuse records are closed by Kansas law and are not open to the public.

The Attorney General has opined (85-105) that an individual does not have the right to inspect every record that bears his or her name if by law that record is closed to the public. It is important to know and keep abreast of the laws that your agency carries out or enforces. If a particular record your agency maintains is to be kept confidential by state law, that record is not disclosed under the KORA. If a document contains information that must or may be kept confidential *and* information that must be disclosed, the confidential portion should be deleted and the rest of the record made available to the requester. This is a complex area, and if in doubt, be sure to check with your FIO.

Federal Exception for Traffic Studies. Traffic studies and certain other safety-related studies are protected from open records requests by federal law. Most county counselors are not familiar with this protection, so the wording of the federal regulation follows:

23 U.S.C § 409. Discovery and admission as evidence of certain reports and surveys.

Notwithstanding any other provision of law, reports, surveys, schedules, lists or data compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement or potential accident sites, hazardous roadway conditions, or railway-highway crossing, pursuant to sections 130, 144, and 152 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

KDOT Typical Exceptions. KDOT normally considers the following information not subject to the KORA, but you should check locally with your FIO and county counselor. KDOT is considered a good example of complying with the KORA as it is in a business similar to county road departments. KDOT typical exceptions to KORA are:

- Records that are privileged under the rules of evidence;
- Medical, psychiatric, psychological or alcoholism or drug dependency treatment records that pertain to identifiable patients;
- Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment;
- The contents of appraisals or engineering or feasibility estimates or evaluations relative to the acquisition of property, prior to the award of formal contracts therefore;
- Notes, preliminary drafts, research data in the process of analysis;

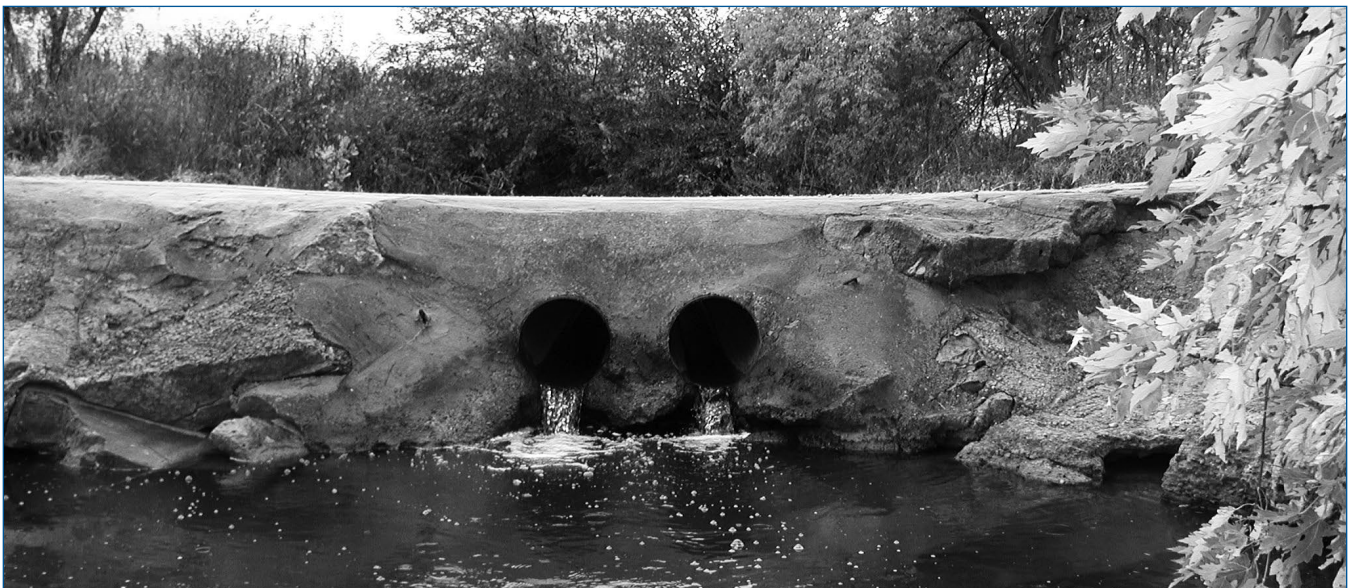
- Records that represent and constitute the work product of an attorney;
- Specifications for competitive bidding, until the specifications are officially approved by the public agency;
- Sealed bids and related documents, until a bid is accepted or all bids rejected;
- Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;
- Engineering and architectural estimates made by or for any public agency relative to public improvements;
- Financial information submitted by contractors in qualification statements to any public agency;
- Information that would reveal the precise location of an archeological site.



ENVIRONMENTAL PERMITS FOR PROJECTS

Introduction. Many construction projects are regulated by state and federal environmental agencies. This is especially true for culvert and bridge projects which, by their nature, disturb riparian areas and streams. On projects that have been designed by a consultant, the scope of services should require that the design engineer prepare required permits. The county, as the Owner, has to sign the permits. The permits are issued to the Owner who is responsible for complying with the terms of the permit. On smaller projects it may be possible to obtain a permit without engineered plans.

Major Environmental Issues. Environmental agencies prefer a minimum of disturbed area—and structures that mimic the natural conditions of the stream. Rip rap and concrete



U.S. Fish & Wildlife Service

This “perched” culvert in a rural area would better allow aquatic passage if the bottoms of the pipes were under the stream surface.

channel protection is discouraged as well as box culverts in larger drainage areas. Low water crossings are also discouraged due attendant difficulties with aquatic organism passage. The hot buttons for environmental agencies are:

—*Channel changes*: Channel changes usually involve straightening a channel close to the road. This work can upset the gradient of the stream and cause channel degradation. Channel changes introduce an artificial channel that will take years to perform like a natural channel, especially to fish and other wildlife. The best advice is to avoid channel changes and minimize channel work.

—*Buffer strip along the top bank of the channel*: A vegetated strip along the top bank of a channel filters out silt and pollutants prior to runoff entering a stream. When trees are part of the buffer strip, this helps shade the stream and keeps water temperatures cool in the summer. Projects should avoid damage to the buffer strips, and if damaged, vegetation should re-established as soon as possible.

—*Aquatic organism passage*: Box culverts are discouraged in larger streams. If the channel changes elevation, a waterfall develops at the outlet of the box culvert. This change in elevation prevents the passage of fish and other aquatic organisms. This restriction will result in isolated aquatic populations and a less diverse mix of aquatic organisms. Low water crossings are also problematic for the same reason. Flow through the tubes of low water crossings also may be too fast for some species of fish.

—*Threatened and endangered species*: Every road supervisor should be knowledgeable about threatened and endangered species and their critical habitat located in the county. Projects that are near habitat for threatened and endangered species are given a critical eye by environmental agencies. The Kansas Department of Wildlife and Parks has good information, by county, on their Web site at: <http://ksoutdoors.com/Services/Threatened-and-Endangered-Wildlife/List-of-all-Kansas-Counties>.

Environmental Agencies. State and federal environmental agencies work together to implement state and federal regulations. Most of the authority for county projects is related to the federal Clean Water Act. An exception is the state's Division of Water Resources that deals more with drainage law and floodplain requirements.

• *Kansas Department of Health and Environment (KDHE)*. The Kansas Department of Health and Environment has many responsibilities and programs. Road departments are most often involved with construction storm water (erosion & sediment control), fuel tanks, and spill response. If the county operates a sanitary or construction and demolition

Work in the "Waters of the United States" does not usually require Pre-Construction Notification if less than 0.1 acre of waters is disturbed. However, you will still have to follow regulations—and have a Project Water Quality Protection Plan. The Kansas County Highway Association has a template you can use to develop a Plan.

(C&D) landfill, that will be operated under rules established by KDHE.

The state is divided into six districts, and most of the KDHE's field staff are located at the district offices. More information on KDHE is available on their Web site at: <http://www.kdheks.gov/>.

• *Division of Water Resources*. The Kansas Department of Agriculture's Division of Water Resources (DWR) regulates activities including stream obstructions such as bridges, culverts, dams, channel changes, and levees. The need for a permit is based on the drainage area at the structure. You can obtain a map from DWR that shows your county's minimum drainage area to constitute a stream.

The DWR is the lead agency for the Environmental Coordination Act. Permits are routed to the following agencies for review:

- 1) Kansas Department of Wildlife and Parks;
- 2) Kansas Forest Service;
- 3) Kansas Biological Survey;
- 4) Kansas Department of Health and Environment;
- 5) Kansas State Historical Society;
- 6) State Conservation Commission;
- 7) Kansas Corporation Commission; and
- 8) U.S. Army Corps of Engineers.

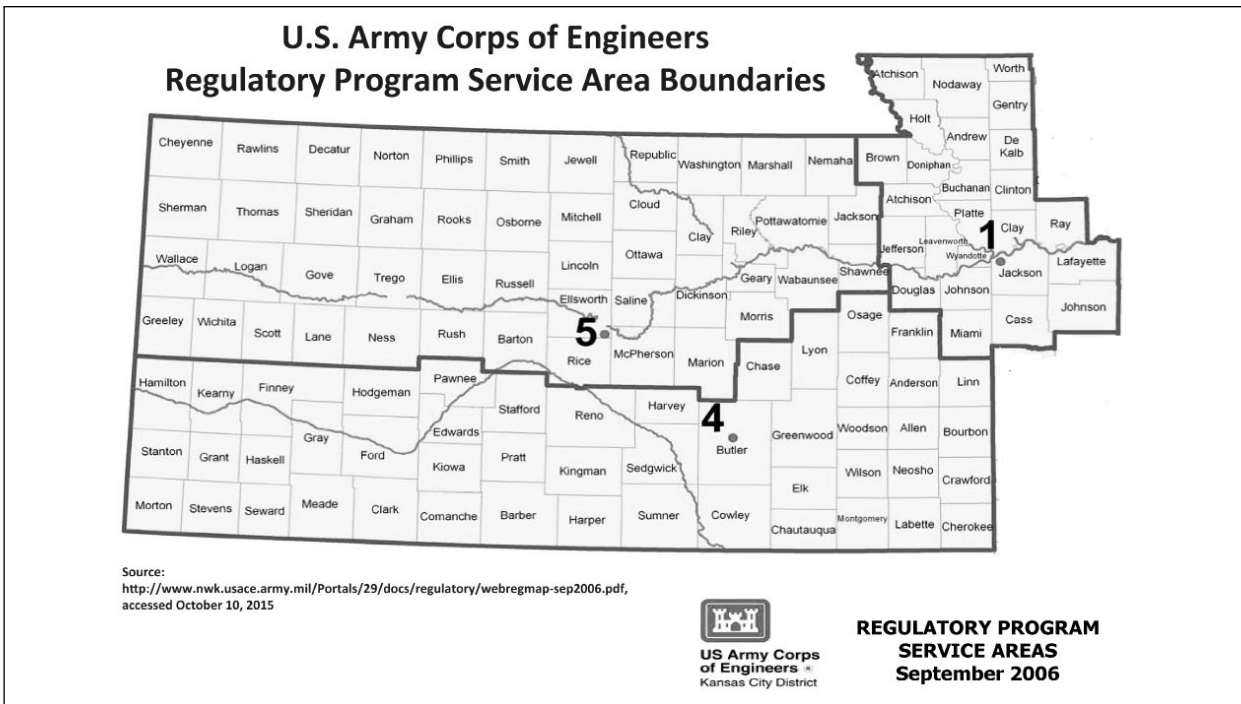
Adverse comments from any of these agencies will delay issuance of a permit until objections are mitigated. The Division of Water Resources consists primarily of engineers and they are normally concerned with engineering matters. The review agencies are not engineers and have an interest in environmental, biological and historic aspects of the project.

The DWR has general permits for simple projects outside FEMA floodplains for replacement structures and when channel work and road fill is at a minimum. A permit from the DWR is required for replacement structures. Additional information is available on the DWR Web site: <http://www.ksda.gov/structures/>

• *Corps of Engineers (U.S. Army)*. The regulatory branch of the Corps of Engineers is the enforcement agency for the federal Clean Water Act related to activities in Waters of the United States and wetlands. The definition of "Waters of the U.S." is complicated, and is basically streams and small channels where there is a defined bed and bank, except for channels that only flow right after a rain. Waters of the U.S. do not normally include man-made and road ditches.

There are three Corps regulatory offices in Kansas; the boundaries of the areas under their jurisdiction are shown on the map on the next page. Phone numbers are below. Corps of Engineers Offices:

- #1—Kansas City (816) 389-3990
- #4—El Dorado (316) 322-8247
- #5—Kanopolis (785) 546-2130.



Corps jurisdiction usually includes all bridges and most culvert and storm sewer projects. Contrary to the name, most of the Corps of Engineers staff that work in the regulatory section are not engineers but biologists. They are primarily interested in the environmental issues of a project.

The U.S. Fish and Wildlife Service and the Kansas Department of Wildlife & Parks routinely comment to the Corps on environmental issues related to the requested work.

Types of Environmental Permits.

- *Open Burning Permit.* KDHE regulates open burning including trees and brush from land clearing and construction sites. Permit forms may be obtained from the KDHE district office. The permit form will also require evidence of approval from the local fire department.
- *Construction Stormwater Permit for Erosion & Sediment Control.* Federal laws and regulations require land disturbance activities (construction) to control erosion and sediment. The EPA is the lead federal agency, and this program in Kansas is handled by KDHE and some local governments. Federal and state regulations require a construction stormwater permit for land disturbance activities when the disturbed area is one acre or greater, and for maintenance five acres or greater. The permit requires an Erosion and Sediment Control Plan prepared by an engineer or erosion control specialist. Also you must check and get OKs from the state Historical Society and Wildlife and Parks. The permit is for one year, and you will be billed an annual fee until grass cover is established and you terminate the permit. Due to the complexity of obtaining a land disturbance permit, many counties are trying to keep their projects under the threshold for needing a permit. More information is available at the KDHE stormwater Web site: <http://www.kdheks.gov/stormwater/>.

- *404 Permit (Corps of Engineers).* A 404 Permit is required for work in Waters of the U.S. and wetlands. Large-scale activities may require an individual permit, and smaller activities may fall under a nationwide permit. A nationwide or general permit is a permit that has been pre-authorized for certain activities. Counties usually fall under *NWP-3 Maintenance* or *NWP-14 Linear Transportation Projects*. The permits require Pre-Construction Notification (PCN) to the Corps which gives them an opportunity to comment on the proposed work. Very small projects may not require Pre-Construction Notification but work must still meet the conditions of the appropriate Nationwide Permit and regional conditions. Contact the Corps office for your area if you have any questions about whether they have jurisdiction, and how to apply for a permit. The Corps office can also furnish application forms and a copy of the Nationwide permit and regional conditions.

Work in Waters of the U.S. does not usually require Pre-Construction Notification if less than 0.1 acre of waters is disturbed. However, you still have to follow regulations—and have a Project Water Quality Protection Plan. A Project Water Quality Protection Plan template can be downloaded from the KCHA Web site Document Center in Word format at: <http://www.kansascountyhighway.org>

- *Stream Obstruction Permit.* A stream obstruction permit is required from the Kansas Division of Water Resources for new or replacement bridges or culverts where the drainage area exceeds a certain threshold as mentioned earlier. A general permit can be obtained if the existing structure is as large as the existing structure, the road is raised less than one ft, and there is less than 200 ft of channel work. A general permit does not require engineered plans. If a general permit cannot be obtained, engineered plans are required.

- *Threatened or Endangered Species Permit.* If a project affects critical habitat of a Threatened and Endangered Species, a permit may be required from the Kansas Department of Wildlife and Parks (KWP). KWP monitors permit applications made to the Corps of Engineers and the Division of Water Resources and will make comments on habitat issues. The KWP typically tries to get owners to modify their projects to minimize habitat destruction. It is usually a good idea to modify the project rather than obtain a Threatened and Endangered Species Permit. More information on environmental reviews and threatened or endangered species is available on the KWP Web site at: <http://www.kdwp.state.ks.us>.

See more about annual environmental permits required of local governments on page 43.

Fuel & Asphalt Storage. Due to the potential of fire, as well as environmental contamination, fuel and asphalt storage is tightly regulated. A small spill can have disastrous consequences to the environment and can be very costly to clean up or remediate. A file should be maintained of the various permits and plans that are required. Employees should have regular training on what to do if there is a spill. To avoid spills, even small tanks should be locked and located to minimize vandalism.

- *Fire Marshall Requirements for Above-Ground Storage Tanks.* Above-ground storage tanks 660 gallons and larger must meet state Fire Marshall requirements and must be licensed with the Kansas Department of Health & Environment (KDHE). Fire Marshall requirements are related to safety and fire prevention and include venting, containment, separation from buildings, foundations and corrosion protection. This is a onetime permit usually applied-for when the tank is installed. For more information visit the Kansas Fire Marshall's Web site at <http://www.kansas.gov/firemarshal/Prevention>.

- *KDHE Requirements for Underground and Above Ground Storage Tanks.* The Kansas Department of Health & Environment (KDHE) issues annual permits for underground tanks of any size and above-ground tanks 660 gallons and larger. KDHE's major concern is environmental protection such as spills or leakage. The KDHE permit is a calendar year permit, and a renewal is mailed automatically. Testing and maintenance records are required for underground tanks due to the chance of unobserved leakage into the soil. Most asphalt the counties use is flowable at 60 degrees, so asphalt tanks do require a permit from KDHE. More information is available on the KDHE Web site <http://www.kdheks.gov/tanks>.

- *SPCC Plan.* A Spill Prevention Control & Countermeasures Plan (SPCC) is required by federal regulation for all facilities that have 1320 gallons or more of petroleum products stored above ground in 55 gallon drums or larger. An SPCC plan is also required if the site has 42,000 gallons of underground storage. Almost all county road department shop sites are required to have an SPCC Plan. If the site has more than 10,000 gallons stored above ground, an engineer has to prepare the plan.

An SPCC Plan includes spill response, notification, documented regular inspections, and documented staff training. If your site does not have an SPCC plan, a template and instructions for a typical shop site is available on KCHA's Web site Document Center at <http://www.kansascountyhighway.org>.

- *Spill Response Plan.* A spill response plan is an essential part of the SPCC Plan. If your site is not required to have an SPCC Plan, you still should have a spill response plan. The spill response plan is normally posted in the shop and includes emergency notification numbers and simple instructions about what to do in case of a spill. A template for a spill response plan is available at the KCHA Web site Document Center: <http://www.kansascountyhighway.org>.

ROAD RIGHT-OF-WAY ISSUES

As the county, you are the custodian of many miles of road right-of-way. You are a neighbor with every landowner and resident located in the rural area. For that reason alone, many issues can arise. A 1,000 mile road system will have over 5,000 acres of right-of-way—about 8 square miles. So the county can be seen as one of the biggest land owners in the county. Well not exactly a land owner, as most of the roads are easements. An easement is a right to use the land in a certain way, and when the easement is no longer needed, it can be vacated and the land would revert back to the adjacent owner.

Road Right-of-Way Widths. Most county roads are on their original right-of-way when the road was opened. Some of the main roads may have been improved and right-of-way purchased. If the road was improved there are usually deeds on file for the purchase, and perhaps plans available that show the right-of-way widths.

When county roads were originally opened, most of them in the 1800's, a petition signed by a certain number of people was submitted to 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 local newspaper and sent to adjacent landowners. 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 then staked the road location determined by the viewers. Adjacent landowners 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.



Right-of-way issues are complex, and many times legal advice is needed.

Normally the road-opening proceedings were filed at the county clerk's office, and were not recorded at the Register of Deeds. The road records should indicate the width of the right-of-way. If the road width is not indicated, it is the minimum width allowed by state law on the date of the opening.

Right-of-Way Location Issues. Roads do not move much. Certainly paved roads can't move, but gravel and dirt roads could theoretically move some, based on maintenance practices. However, there are many kinds of restraints keeping roads from moving, such as culverts, bridges, fences, and intersections, as well as the watchful eyes of adjacent landowners. So now, 130 years after the road was surveyed and damages paid accordingly, a surveyor determines the road or the right-of-way fence is in the wrong place. There are a lot of reasons that a modern surveyor will not come to the same answer as the original surveyor. A monument may have been lost and reset in a slightly different location, modern equipment is much more accurate, and 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, so is it necessary to move the road to satisfy a surveyor? This situation came up a long time ago and was settled by the Kansas Supreme Court in 1886. The court said that not only do you not have to move the road, you cannot move the road.

Sometimes the landowner just wants to build a fence closer to the road. This is essentially taking public road right-of-way and turning it to private use. In almost all cases this should not be allowed. Sometimes landowners want the county to stake the right-of-way line when they build a new fence. Most counties just tell the landowner the road was surveyed when the road was opened, so just put the fence back in the same location. If no fence is in place and the road was opened 60 ft wide, the farmer can easily measure 30 ft from the center of the road. This may not seem scientific, but a new survey may not fit anyway. If existing fences are too close to the road—say the right-of-way width is 50 feet but the fences are at 40 feet—it will probably be necessary to have the right-of-way staked by a licensed surveyor, and the

county will probably have to pay the fence-moving costs.

Right-of-way issues are fairly complex, and many times legal advice is needed. 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 resolution of common problems. A copy may be downloaded from the Kansas Society of Land Surveyors' Web site at <http://www.ksls.com> or contact Lyon County Public Works.

Resources on right-of-way acquisition include KDOT's Bureau of Local Projects (BLP) staff who can answer questions and provide training about proper procedures for acquiring ROW. For detailed requirements, see Section 6 of BLP's *Local Public Authority (LPA) Project Development Manual*, available at kart.ksdot.org.

Closed or Vacated Roads. Many people confuse the terms "vacated road" and "closed road," and there is a difference. A closed road is not open to public travel.

A closed road may have fallen into disrepair for lack of maintenance, it may be closed for construction, or because a bridge is out. A closed road is really an untraveled road, and the road easement is still in place.

A vacated road is a road that no longer exists as a public road because the right-of-way has been vacated by official action of the county commission.

A township may not legally vacate a township road, although they may decide to close a road, or perhaps not maintain the road. The county commission can vacate a county or township road right-of-way using the procedures outlined in K.S.A. 68-102 or K.S.A. 68-114.

Authority and procedures are provided by K.S.A. 68-114 for laying out, relocating, altering, widening, or vacating a road. For relocating roads or for opening new roads the right-of-way is usually purchased by the county or perhaps donated by the landowners.

Opening an Untraveled (Closed) Road. Counties and townships usually have a number of miles of road that have fallen into disrepair and are no longer being travelled. This

is especially true in counties that are losing rural population. If a road has not been officially vacated, the right-of-way still exists, and the county or township can open the road if desired. However, many counties have determined that these roads are no longer a public utility and if a landowner wants to have the road opened, he or she can bear the cost. The land owner usually has to enter into an agreement with the county to work on the right-of-way and the agreement specifies the standards to which the road is built.

K.S.A. 68-115 provides that, on an unopened township road, the adjacent land owner who wants the road opened is required to improve the road to township standards. There is some question about the owner's responsibility in a County Unit county, as the statute says township roads.

Johnson County adopted a resolution requiring the requesting landowner to pay the cost of opening a road. The required road was just an 18 ft wide surface, with 4" of crushed rock, and "v" ditches, but the expense of doing even this work is enough for most people to change their minds on the need for the road.

Minimum Maintenance Roads. Certain roads are needed for occasional use but do not need to be maintained to normal road standards. The legislature has provided for a designation of "minimum maintenance road" for this type of situation and has also provided for protection from legal claims. There is a certain procedure for the county commission to designate a minimum maintenance road in K.S.A. 68-5,102. Warning signs with the wording in the statute need to be installed by the county, which then warns the public and protects the county from liability for road defects.

A minimum maintenance road still needs some maintenance and should be passable during dry weather. The road should not have hidden defects that could cause an accident, such as a washed-out culvert.

Mailboxes in the Right-of-Way. Mailboxes are private property that are, in most cases, located on the right-of-way. Mailboxes can be a hazard to traffic, and large solid mailboxes should be discouraged. Mailbox installation is hard to control, and few counties have regulations that limit the size and type of mailboxes. Certainly mailboxes that are a hazard can be removed by the county, but this action may have political consequences. Sometimes mailboxes are damaged by county equipment, with most of those incidents occurring during snow removal. Most counties will only put up standard mailboxes as replacements, as it raises the potential for the county being involved in a lawsuit if a county installs a non-standard mailbox, even if just a straight replacement.

Entrances, New and Existing. Existing entrance pipes on the road right-of-way are usually the responsibility of the

county or township. The county or township usually replaces or repairs the pipe when needed. If an extension is required by the landowner for use of large equipment, that cost can be charged to the landowner. For existing pipes and extensions it is a good idea to check county policy or practice. State law actually specifies that if the county cuts a ditch through an existing entrance, the pipe should be installed at county cost. The statute also seems to imply that for a new entrance, the landowner pays the cost. K.S.A. 68-543 pertains to entrances in County Unit counties, and K.S.A. 68-543a addresses County Township counties.

Most counties have policies on new entrances—where they can be placed, type of material, length, and who is responsible for the cost. The policy is usually administered using an entrance permit that is filed by the property owner desiring the new entrance. Any new entrance location should be checked for adequate sight distance down the main road for safety, as well as the diameter of pipe needed. Some private contractors seem to have difficulty setting pipes at the proper elevation, so many counties install the new entrance and charge the landowner.

Unauthorized Work on Right-of-Way. It is not unusual for property owners to work in the right-of-way without permission from the county. This work might include installing a culvert, blading the road, digging a deeper ditch, etc. All these acts are illegal without county permission per K. S. A. 68-545, which is printed below. See the section of this handbook concerning road damage (pg. 40) for advice on being reimbursed for the cost to restore the road. Unauthorized work on the right-of-way is a misdemeanor, which is a criminal offense. Most county attorneys are reluctant to prosecute except for repeat offenders who have been notified in writing to not work in the right-of-way. For serious a problem,

it is appropriate to send a letter to the person working in the right-of-way to state that the actions are illegal and he or she is responsible for the cost to restore the road.

K.S.A. 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

Many counties have a permit system that authorizes utilities to be placed in the right-of-way in accordance with plans furnished by the utility and construction requirements specified by the county.

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.

Sight Problems at Intersections. Because of restricted right-of-way sight issues at intersections are difficult to correct. There are two statutes counties can use to help with sight distance issues due to obstructions. K.S.A. 19-2612 authorizes the board of county commissioners to cut all hedge fences, trees and shrubs growing upon the highway right-of-way or on right-of-way boundary, and to remove all signboards, billboards, and board fences obstructing clear vision within three hundred fifty (350) feet of a railroad grade crossing or abrupt corner in the highway. Most road supervisors ask the landowner for permission first, and then work under the authority of this statute if the landowner does not give consent.

K.S.A. 8-2011 makes it the duty of the landowner to remove any tree, plant, shrub or other obstruction, or part thereof, which, by obstructing the view of any driver, constitutes a traffic hazard. The county commission has to determine, based on an engineering and traffic investigation, that such a traffic hazard exists, then notify the owner and order that the hazard be removed within ten (10) days.

Utility Issues. In Kansas the counties have the responsibility to maintain the public roads within their boundaries. To provide modern conveniences to our citizens, it is necessary that public utilities be allowed to use the same right-of-way acquired by the counties. The primary purpose of road right-of-way is for public travel. The county owns the right-of-way and has some responsibility to see that utilities are installed in a way that minimizes traffic safety issues and does not unnecessarily hinder travel on the right-of-way. In addition, the county owns and maintains the road improvements such as pavement, curb, drainage structures and sidewalks. It is important that damage to these facilities is minimized, and when they are damaged, that they are repaired properly to obtain the maximum service life and minimize county expense. State law provides that cities and counties 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.

Authority to Use Public Road Right-of-Way. In Kansas the authority to place public utilities in road right-of-way has been established by a series of Kansas Supreme Court decisions and were best summarized by *Mall v. C. & W. Rural Elec. Coop. Ass'n Inc.*, 213 P.2d 993,996 (Kan. 1950). These court cases generally allow the use of road right-of-

way by public utilities, provided that it does not “seriously impede or endanger public travel or unnecessarily interfere with the reasonable use of the highway by other members of the public and there is no invasion of the rights of the owners of abutting lands.” There are specific statutory provisions for electric cooperatives (K.S.A. 17-4601 et seq.), sewerage corporations (K.S.A. 16-623-4), telegraph and telecommunications companies (K.S.A. 17-1901 et seq.), and wind power (K.S.A. 17-4654 et seq.).

Permits to Work in Right of Way. Many counties have a permit system that authorizes utilities to be placed in the right-of-way in accordance with plans furnished by the utility and construction requirements specified by the county. The county commission is sometimes the approving authority, and in some counties the road supervisor or county engineer can execute the permit in behalf of the county. If a permit system is not in place, it will take assistance from the county counselor and authorization from the county commission to establish a permit system.

One Call. The Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801, et. seq. provides that excavators must give two full business days notice prior to excavating. The Act also establishes a one-call center that is financed by participating utilities. There are penalties for failure to comply with the Act, both for a utility’s failure to mark and for excavators that fail to notify One Call of their intent to excavate. Many counties have a log of notifications to the call center where they keep track of the date and time of the notification, as well as the location.

Private Utilities. A limited number of public utility companies can legally occupy the road right-of-way, but there are an unlimited number of private companies that could request to use the right-of-way. Since most right-of-ways are already crowded with public utilities, there really isn’t enough room for private utilities.

Working with public utilities can be complicated and difficult; however there are much more serious long-term issues involved with private utilities.

- The company may not be a member of Kansas One-Call system, so the line may not be flagged when there is construction work in the area.
- There is no guarantee that the facilities will be maintained properly.
- The owner may not have the financial capability to pay for road damage that may occur, or to perform relocation of the line for necessary road work.
- The ownership of the line may change and the new owner may not realize their responsibility for the line in the right-of-way.
- The owner may not be available to respond in an emergency.

The Attorney General has opined (82-228 & 99-53) that the county does not have authority to grant an easement or a permit to a private party to install pipe in the right-of-

way. Additionally, there are no benefits to the county to have a private line on the right-of-way. The best policy is to not allow parallel lines in the right-of-way, but allow pipeline crossings. If a company needs to cross the road, they have already obtained permission to install the line from the adjoining landowners, so there are no issues with the county having authority to grant the permit. Where pipelines cross the road they should be clearly marked, as few private companies are members of One-Call.

Utilities in ROW Guide. Kansas LTAP has published a *Guide for Accommodating Utilities Within Right-of-Way for Counties and Small Cities in Kansas*, 2007. This guide discusses issues relating to utilities in the right-of-way and suggests solutions. The guide also has sample forms available in Microsoft Word format. The guide and forms can be downloaded from the Kansas LTAP Web site at <http://www.ksltap.org>, then click on “Resources to Download.”



LAND SURVEYS

History of the Sectionalized Land System.

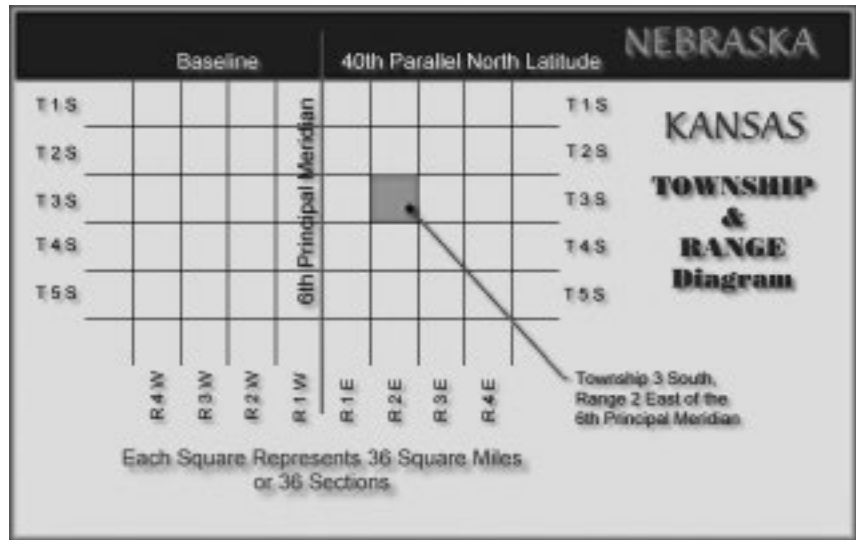
Federal government surveyors who laid out Kansas in one square mile sections began surveying the Kansas territory in 1855. They basically started in eastern Kansas and worked west, and completed the survey of Kansas in the 1870's. Monuments (usually stones) were set at half mile intervals around the exterior of sections. The stones were set so one-third or more of the stone extended above ground level.

As an area of the state was homesteaded and settled, it became necessary to establish roads. Outside of city limits, the county was responsible for opening roads. Most roads in Kansas were opened on the section line, which is where the government stones were located. The county surveyor was supposed to lower the stones so that they would not be destroyed by public travel. If the surveyor did not, the stone was likely lost when the road was opened. The stone could also be dislodged if the road elevations lowered due to washing, erosion, or construction. It was the county surveyor's responsibility to lower the stone and record reference measurements so the stone would be preserved or the original location easily located.

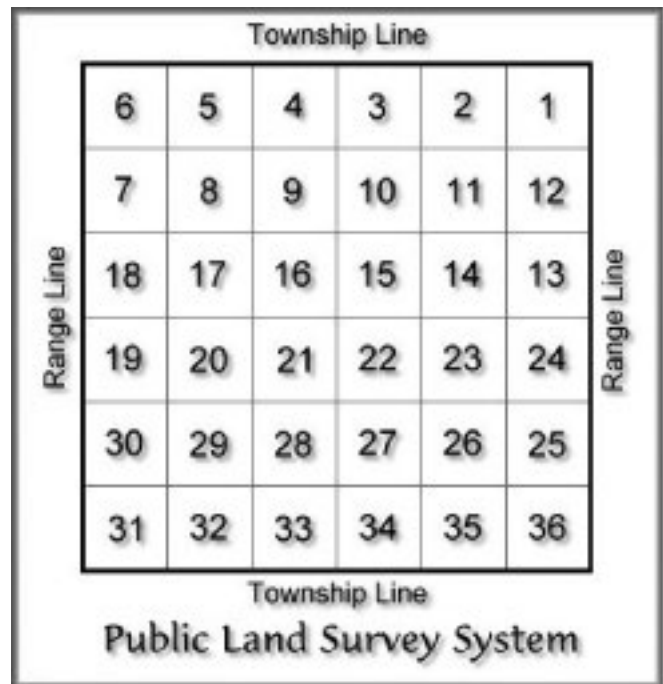
It is apparent that most of the stones that have been lost are probably due to actions or inaction of the township or county road departments or the county surveyor. In many cases, road maintenance and re-surfacing has covered the stones, so it is now necessary to dig up the road to find the stone. Surveyors started setting iron bars beside the stones during the 1920's, so the location is easy to find with a metal detector if it has been uncovered since 1920.

Understanding Section, Township & Range. The progression of the federal survey was to establish the state line with Nebraska as the east-west base line, and the 6th Principal Meridian as the north-south base line. The 6th Principal Meridian starts at the northwest corner of Washington County and runs straight south to the Oklahoma border. Meridian Road on the west side of Wichita follows the 6th Principal Meridian. On Interstate 70, the 6th Principal Meridian is the Saline-Dickinson county line.

The Nebraska border and the 6th Principal Meridian are the basis for land descriptions in Kansas. A township was designated a 6 mile square consisting of 36 sections numbered 1–36. Townships are identified by a grid system called townships and ranges. Townships are measured



Kansas Society of Land Surveyors



There are 36 sections in a normal township and they are all numbered in order, as shown here.

south from the Nebraska border. So Township 12 South or abbreviated “T 12 S” is the 12th township south of the Nebraska border or 12 x 6 miles = 72 miles south of the Nebraska border. The east-west designation is called a range, and the ranges are measured from the 6th Principal Meridian, with the same mathematical relationship. The top illustration on page 29 shows this relationship.

There are 36 sections in a normal township and they are all numbered in order, as shown on page 29.

Section Corner Preservation. A number of items are currently required of the counties by state law if the cornerstone is on county road right-of-way:

- We should protect the cornerstone from damage by our activities. (K.S.A. 21-3724);
- If the cornerstone is in danger of being displaced, the county surveyor should lower the stone and take reference measurements. (K.S.A. 19-1430);
- If the corner will be covered with more than 2 ft of fill or will be covered with asphalt or concrete, the county surveyor has to make reference measurements to perpetuate the location of the corner. (K.S.A. 19-1430).

The following are some suggestions for how the counties can meet the above legal requirements:

Cornerstone Protection: Each county should have a county surveyor who the road supervisor can contact if a cornerstone may be dislodged either from maintenance or a construction project. Any licensed land surveyor knows the legal requirements and can file the required reports.

Projects: All construction projects usually start with setting a center line and control points for future reference and writing legal descriptions. On county and township roads the center line is usually the section line, and the control points are the section corners. The consultant hired to design the project will have a surveyor on staff that can establish the section corners to be used for control.

In most of rural Kansas the consulting engineer who designs the project is not from a local company; in that situation

I would suggest hiring a local surveyor to recover the corners and furnish the information to the consultant. The consultant should not just use the center of the road as a control point. That might save a little money, but is not good practice.

Paving and reconstruction projects: Keep in mind that it is better to dig for the corners before paving than after. Reconstruction can damage corners. If you have an upcoming project you should have a surveyor check the project to make sure all the corners are properly referenced before the work.

Survey Records. Survey records are very important to both the private surveyor and the counties. Each county road department should keep a file of surveys and corner references sent to them. In rural counties file folders divided by township may be all that is needed.

The road supervisor and office staff should know the location of all survey records. These records include the original federal survey field notes and plat, county surveyor permanent survey book, commissioner’s road journal, road opening packets, and hopefully an index to road openings.

Relationship With Surveyors. There are fewer than 400 private surveyors in Kansas. Most of these surveyors work in urban areas and are involved in platting and staking of new developments and construction projects. In the more rural areas of Kansas, a surveyor may have to cover five or six counties to have enough work to stay in business.

The cost of a property survey is directly related to how good the county records are and if the county cooperates with private surveyors in digging for corners. The fee for a survey is also affected by the difficulty in obtaining section corner information close to the property being surveyed. The farther the surveyor has to search for cornerstones, the more expensive the survey. Any help the county can provide in locating section corners will save landowners money. In fact, in some cases it is almost impractical to do a private survey without the cooperation from the county.

Many counties help surveyors by digging for corners. This involves the private surveyor doing the research, knowing where to dig, having utilities flagged, and observing the digging process. The county then provides traffic control and digs for the corner with a backhoe or road grader. The surveyor documents the process and files the required reports with the county and Kansas State Historical Society. Then the corner is on record and it will not be necessary to dig for this corner again. Some counties just allow the surveyor to dig up the road. The surveyor hires the backhoe, etc., and bills the client for the cost. This procedure saves the county some money, but is quite a large expense for a private landowner.



Photo courtesy of Thomas County, KS.

Over the years, some section cornerstones have been lost when road work was performed.

KDOT Bureau of Local Projects - County Road and Bridge Funding Categories

FUNDING CATEGORY	FUND SOURCE	FUND RATIO	COMMENTS	KDOT CONTACT
Surface Transportation Program (STP)	FHWA	80/20	Distributed by formula to all 105 counties. Flexible funds that can be used for projects on Major/Minor Collector or for bridges on any public route.	BLP
Off-System Bridge	FHWA	80/20	Funds for replacement or rehabilitation of eligible bridges on non federal-aid eligible routes.	BLP
High Risk Rural Roads (HRRR)	FHWA	90/10 or 100% Fed	Safety improvements on county roads. Projects may be site-specific or systemic over a corridor.	BLP
402 Safety	FHWA	Varies	Funds for safety-related activities such as traffic studies and safety training. Includes TEAP and TASK.	BLP
Highway Safety Improvement Program - Railroad Crossing	FHWA	Varies	Installation of protective device and hazard elimination at rail/highway grade crossings on public roads.	BRD
Transportation Alternatives	FHWA	80/20	Projects for environmental improvements, bike/pedestrian facilities, historic restoration of transportation facilities, and other similar activities.	BTP/BLP
Technology Transfer (LTAP Program)	FHWA & State	100%	Provide local agencies technology and related training through the KU Transportation Center (KUTC)	BOR/BLP
Emergency Relief Program	FHWA	100% Fed	Program to assist local agencies with expenses from natural disasters or catastrophic failures from an external cause.	BLP
Kansas Airport Improvement Program	State	varies	Improvements to public-use airports focused on preservation and enhancement.	DOA
Economic Development	State	varies	Program for infrastructure improvements to support creation of new jobs and capital investment in Kansas.	BTP

Abbreviations:

BLP = Bureau of Local Projects	TEAP = Traffic Engineering Assistance Program
BRD = Bureau of Road Design	TASK = Traffic Assistance Services for Kansas
BTP = Bureau of Transportation Planning	LTAP = Local Transportation Assistance Program
BOR = Bureau of Research	
DOA = Division of Aviation	

KDOT/BLP

It is a good practice to get to know your local surveyors. If you help them, it is not unreasonable to expect some help and advice in return.

COUNTY FEDERAL AID PROGRAM

Overview. Federal funds for road and bridge construction are available to Kansas counties and cities. KDOT receives federal funds from the Federal Highway Administration (FHWA) then passes these funds to local governments to partially fund certain projects. Each county is allocated a certain amount of funds based on a number of factors such as population and vehicle miles driven. Construction projects using these funds are usually bridge replacement projects and certain road improvements on federal-aid-eligible routes.

Cities over 5,000 in population have a separate set of funds and deal directly with KDOT. For cities less than 5,000 the project has to be submitted by the county, and will use the federal funds allocated to the county. During project development the counties interface with KDOT's Bureau

of Local Projects (BLP). Detailed information on funding programs and contact information at the Bureau of Local Projects is available at the KDOT website at <https://www.ksdot.org/>. Click on Inside KDOT and follow the prompts.

Project Development. Projects to be eligible for federal funds must be developed in accordance with federal and state regulations. Each project must be designed by a professional engineer, right-of-way must be purchased in accordance with federal regulations, and utilities must be relocated prior to construction. The project will be let by KDOT in Topeka, and the construction contract will be administered by KDOT through the local KDOT Area Engineer. The county pays for design engineering, right-of-way, geologic testing, and utility relocation with 100% county funds. On STP and Off-System Bridge projects, federal funds pay 80% of the construction contract and construction engineering.

Funding Categories. The chart above shows federal funding categories, source, and ratio (local match) information. For more specifics and updates see the Bureau of Local Projects website or call the BLP Local Road Engineer assigned to your county. Another good source of info on available programs

is KDOT's publication titled "Local Program Opportunities," available online by going to KDOT's web page. Click on "Local Governments" near the bottom of the page, then scroll down to the link named "Opportunities for Partnership with Local Units of Government."

Surface Transportation Program (STP). The STP city/county programs provide funding for work on certain non-state roads based upon FHWA's functional classification system. The STP county fund is in place for all 105 counties in Kansas and is applicable to about 21,000 miles of roads functionally classified as Major Collector Routes throughout the State. In addition, STP funds may be used for construction, reconstruction, or rehabilitation of bridges on any public road. Funding is allocated to counties based upon the same formula used to distribute Special City and County Highway Funds. The formula is based on road-miles, vehicle registrations, and vehicle-miles traveled. Cities with a population of less than 5,000 do not receive their own allotment of federal funds. Federal-aid projects in these cities would be paid with county funds at the county's discretion. Projects under this program are funded on an 80 percent federal/20 percent local match basis.

Federal Funds Exchange. In Kansas, the federal STP funds allocated to each county and certain cities over 5,000 population may be exchanged for state funds, which will give the local agency greater flexibility and control over the way the funds are used. The Federal Fund Exchange Program is a voluntary program that allows a local public agency (LPA) to trade all or a portion of its federal fund allocations in a specific federal fiscal year with KDOT in exchange for state transportation dollars. An eligible LPA may choose to exchange its federal funds or it may use the funds to develop a federal-aid project. Fund exchange dollars must be used on transportation projects and are paid on a reimbursement basis. All phases of a project are eligible. Information on the Federal Fund Exchange Program and required forms are available on the KDOT Local Projects website.

High Risk Rural Roads. The Kansas High Risk Rural Roads program is funded with a portion of the Highway Safety Improvement Program (HSIP) funds allocated to Kansas. This program addresses safety issues on rural roads, determined by either a site-specific study or falling into one of the categories identified as high risk based on statewide or national data, including signing and pavement marking, roadway departure, fixed objects in the clear zone, and certain curves. KDOT annually requests counties to submit applications for safety improvement projects. These applications are evaluated and ranked on a variety of factors to provide for the greatest safety impact from the limited available dollars.

Off-System Bridge Program. Federal law requires that a portion of the STP dollars be used to rehabilitate or replace substandard bridges not on a federal-aid route. Substandard bridges are those in a deteriorated condition or with



A contract for a bridge inspection should be executed about six months before bridge inspections are due. Above is a 1910 Kingpost truss bridge in Republic County.

deficiencies in load-carrying capacity, width, or traffic service. Eligible bridges are funded for construction on an 80 percent federal/20 percent local match basis. KDOT annually requests counties and cities to submit candidate bridge projects. Submitted projects are ranked on such factors as condition, detour length, traffic count, and geographic balance across the state.

402 Safety Program. This category of safety funds is available to counties for safety-related activities such as traffic studies and safety training. Included under this category are the Traffic Engineering Assistance Program (TEAP) and Transportation Assistance Services for Kansas (TASK). Generally these programs are paid with 100% federal funds and there is no local match required. KDOT's Bureau of Local Projects is the contact for this program.

Federal Aid Program Additional Information. While the federal aid program is not complicated, county officials do not have enough projects to remember all the details. The county engineer or road supervisor is on a mailing list from the Bureau of Local Projects that is used to send notice about changes in the program. Help using federal aid is available on both a group and individual basis. The Local Technical Assistance Program (LTAP) offers a Local/State Project Coordination class as webinar modules that can be viewed anytime online at <http://www.ksltap.org> at the Training Webinar link. KDOT's Bureau of Local Projects has a Local Road Engineer assigned to every county who is available to you to answer specific questions.



BRIDGE INSPECTION REQUIREMENTS

Definition. A bridge is a structure erected over a depression or obstruction for carrying highway (vehicular) traffic and having an opening measured along the center line of the roadway of more than 20 feet between the inside faces of the abutments, or the spring lines of arches, or the inside opening of a single box or pipe, or the extreme ends of openings for multiple boxes, or the extreme ends of openings for multiple pipes where the clear distance between the openings of adjacent pipes is less than half of the diameter of the smaller pipe. A low water crossing is not considered a bridge for national bridge inspection purposes and should not be included in the National Bridge Inventory (NBI).

General Requirements. Federal law requires that all bridges on public roads that are open to traffic be inspected at a minimum of a two-year cycle. The national bridge inspection requirements have been delegated to KDOT, which is responsible to FHWA for seeing that the local bridges are properly inspected. Counties and cities are responsible for inspecting their bridges or seeing that they are inspected in accordance with federal and state requirements and submitting the bridge inspection data to KDOT's Bureau of Local Projects (BLP).

Each bridge has a bridge inspection folder on file at the county/city office. This folder will include pictures and reports of previous inspections, plans, load ratings, and scour assessments. These folders are important, and should be located and kept in a safe place. If repairs are made on a bridge, that information should be placed in the folder for use by the bridge inspector at the next inspection. The date of the last inspection is available in the bridge folder, and a new inspection will be required within two years or less of that date. If in doubt on the date, contact the KDOT BLP Bridge Team. Inspection data is reported to KDOT BLP through their online Bridge Inspection Portal.

Bridge Inspectors. Most counties/cities contract with a pre-qualified bridge inspector to perform required bridge inspections. A statewide standard scope of services is required for all bridge inspection contracts. A list of pre-qualified bridge inspectors and the required scope of services is available on the KDOT Authentication & Resource Tracking (KART) website (kart.ksdot.org).

Most counties/cities select the bridge inspector in the same manner as other professional engineering services. Bidding bridge inspections is not required, and many counties/cities just take proposals from a few pre-qualified firms. A contract for the bridge inspection should be executed about 6 months before the bridge inspections are due.

Routine Biennial Inspection. Most county bridges are inspected on a two-year interval. Bridge inspectors prefer to do inspections in the fall, winter, and spring when snakes,

insects, and poison ivy are not so much of a problem. The inspector will update the bridge folders and submit the data electronically to KDOT BLP using the Bridge Inspection Portal. The bridge inspector is required to submit a written report to the county listing items needing attention specified in the appendix in the scope of services. Prior to issuing a Request for Proposal for bridge inspections check the appendix to the scope of services and include any additional items that the county/city would like in the written report. At a minimum the report should include a list of: 1) bridges that need to be closed, 2) weight limit signs installed or replaced, 3) annual inspections, 4) fracture critical inspections, 5) underwater inspections, 6) pin and hanger inspections, 7) load ratings, and 8) scour evaluations.

Routine Annual Inspection. Annual inspections are required on some bridges because of deteriorated conditions. These are usually poor-condition bridges that have a low weight limit or a structural condition that needs to be checked more often than the normal two-year interval. Bridges with critical issues may need to be inspected more frequently than annually (e.g. every 3 or 6 months). Visit with the bridge inspector about annual inspections. Usually the annual inspections can be included when the contract is signed for the biennial inspections, and that will save a separate Request for Proposal on the annual inspections.

New Bridges. An inspection is required for all new, rebuilt, or repaired bridges. This inspection is required within 90 days of the completion of the work or opening to traffic, whichever comes first. Minor repairs do not trigger a new inspection. If there is a doubt whether a new inspection is needed, contact the KDOT BLP Bridge Team.

Scour. Scour refers to erosion around the piers and abutments that can occur due to the velocity of water and turbulence during a flood event. Some structure types and foundation types are more susceptible to scour. Every bridge over water must have a scour evaluation that should be placed in the bridge file. The scour evaluation may have resulted in a Plan of Action; that is, a list repairs that the county/city may choose to undertake to better protect the piers or abutments, or may specify that the bridge is to be inspected for damage after each flood.

Fracture Critical. A fracture-critical bridge is a structure that, if one member or joint fails, the entire bridge will collapse. In Kansas these are mostly truss bridges and steel girder bridges with just two beams. These types of bridges require special inspection as the failure of just one item can be catastrophic. A fracture-critical inspection is required in addition to the routine inspection.

Underwater. Underwater bridge inspections are required of certain bridges where the pier or abutments are always in standing water. This type of inspection usually requires a trained diver. KDOT does these on a statewide basis, and

charges the county 20% of the cost. The remainder of the cost is paid with federal funds. An underwater inspection is required in addition to the routine inspection.

Posting Load Limits.

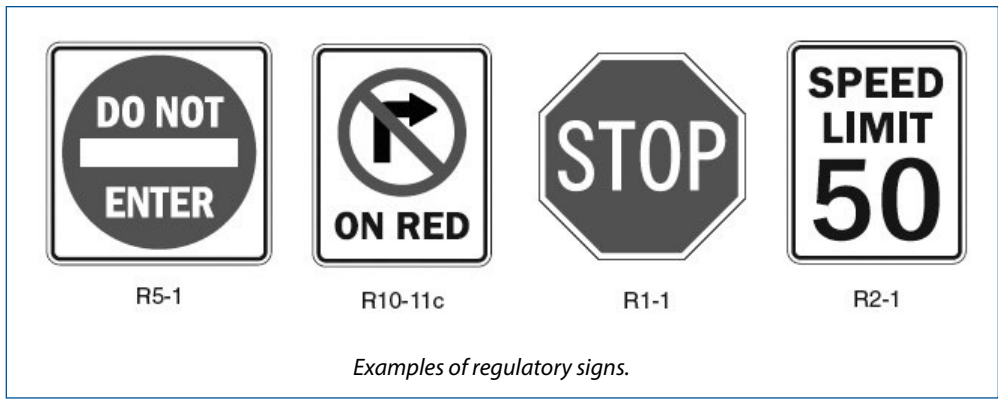
Federal regulations require that bridges that cannot carry the state legal load safely shall have weight limit signs erected on both sides of the bridge. The bridge inspector will note if the weight limit signs are in place, and will normally notify the county promptly if a sign is missing. If the weight limit changes due to bridge condition or a new load rating, then a resolution by the county commission is required to change the posted weight limit. A three-ton weight limit is the lowest weight limit allowed. A bridge not capable of carrying a minimum gross live load weight of three tons, as determined by a load rating, must be closed. A sample weight limit resolution is available from the Kansas Association of Counties.

Condemnation of Bridge. K.S.A. 68-1126 provides that the county engineer can condemn and close any bridge or culvert the engineer deems unsafe for public travel. The engineer then notifies the county commission and township officials. If the county does not have a county engineer to make this determination, it is prudent to rely on the bridge inspector's recommendations for bridge closure.

Federal regulations require any bridge with a "critical finding" to be repaired, closely monitored, or closed. KDOT's *Local Bridge Inspection Manual* defines a "critical finding."

Bridge Maintenance Recommendations. An option in the scope of services for bridge inspection is to provide the county with a report of recommended maintenance needed, if any, on each bridge. Some of the maintenance is routine, and timing is not critical, while some repairs are more urgent. Many counties use the maintenance recommendations as a bridge crew fill-in project list. The bridge crew then does these repairs as time allows between major projects and other higher priority activities. Of course, urgent repairs need to be accomplished in short order, and should not be delayed.

Bridge Inspection Check. KDOT BLP does routine audits of county and city bridge inspections. They will select a sample of bridges. On the sample bridges they will check the bridge files for compliance with regulations, and will make a field inspection to check the ratings and other data. A report of the audit will be furnished to the county. If deficiencies are found in the inspection and the Owner used KDOT BLP's required scope of services, then the contracted inspectors are required to correct any discrepancies or deficiencies at their cost.



Additional Bridge Inspection Information. If you have any questions about bridge inspections, contact the KDOT BLP Bridge Team at (785) 296-3861 or by email at blp_bridge@ksdot.org.

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SIGNING

General. The purpose of traffic control devices is to promote highway safety and efficiency by providing for the orderly movement of all road users. There are specific federal standards for the placement of signs, and also their location and height on the sign mounting.

Failure to properly maintain signing is a common basis for claims against the county. Leaning and faded signs reflect poorly on the county and do not function as intended. A new road supervisor needs to become quickly familiar with signing standards.

The county is responsible for erecting and maintaining traffic control signs on county roads. On township roads the county may be responsible for some signing as discussed later in this section. KDOT normally maintains the STOP signs and STOP AHEAD signs on local roads approaching a state highway. The county usually maintains the street name signs on township roads and at intersections with state highways. Traffic control signs must be erected in a certain uniform manner and be of standard size and with standard sign posts.

Traffic control devices come in many sizes, shapes and configurations—from the eight-sided stop sign to traffic signals and pavement markings. Authority for most traffic control activities is found at K.S.A. 8-2001 et. seq. The general statute that authorizes counties to install stop, yield and other traffic control devices is K.S.A. 8-2008. State laws, such as speed limits, may apply over roads that are not covered by Kansas Department of Transportation jurisdiction. Counties should not adopt traffic regulations that conflict with state law and state regulations.

K.S.A. 8-1512 prohibits private signs on the public road right-of-way, and authorizes the removal of the signs without notice to the landowner. A road supervisor does

not have the authority to grant permission for private signs to be placed on the right-of-way.

MUTCD & LVR Handbook.

• *MUTCD.* The Secretary of Transportation has adopted the *Manual on Uniform Traffic Control Devices* (MUTCD) (2009 Edition including revisions 1 and 2), as of this writing) as the standard for public roads in Kansas including city, county and township roads. The MUTCD is a national standard developed by the Federal Highway Administration (FHWA), and contains over 700 pages. The MUTCD covers almost all situations that might be encountered on freeways, expressways, city streets, rural roads and bike trails.

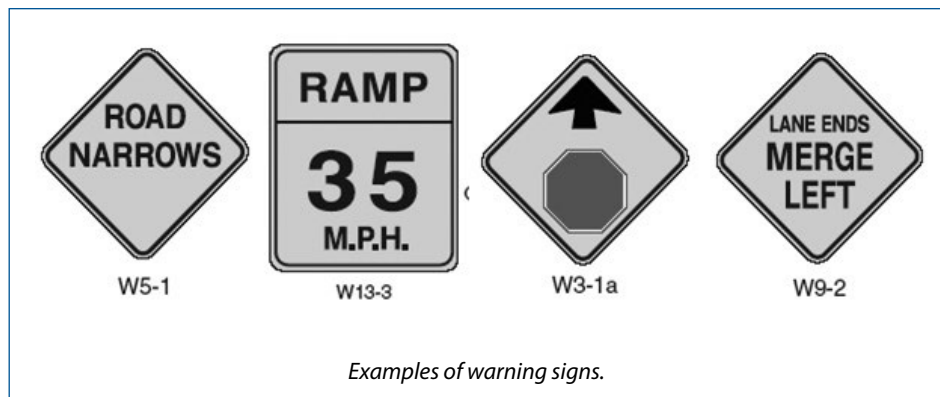
The MUTCD is available online at the MUTCD website: <http://mutcd.fhwa.dot.gov>, and is available in print from various organizations such as the American Association of State Highway Transportation Officials (AASHTO) and International Transportation Engineers (ITE). It is also available for mobile devices from Amazon and Apple's store.

• *MUTCD Compliance Dates.* After the effective date of a new edition of the MUTCD or a revision, new or reconstructed devices installed shall be in compliance with the new edition or revision. When a non-compliant traffic control device is being replaced or refurbished because it is damaged, missing, or no longer serviceable for any reason, it shall be replaced with a compliant device.

The MUTCD established certain target compliance dates for implementation of particular important changes to the MUTCD that are shown in Table I-2 of the MUTCD. These target compliance dates established by the FHWA are shown in Table I-2 of the 2009 MUTCD. Revision 2 of the MUTCD deleted 46 compliance dates in Table I-2, so printed versions of the MUTCD will not have the current Table I-2.

• *LVR Handbook.* The *Handbook of Traffic Control Practices for Low Volume Rural Roads*, (aka LVR Handbook), developed in 2005 by Kansas State University and sponsored by both KDOT and FHWA, is just for rural roads with less than 400 vehicles per day. The handbook covers situations that are unique to low volume roads and so it smaller and easier to use than the MUTCD. The intent of the handbook is to meet the standards in the MUTCD; it is not a separate standard.

The LVR Handbook was based on the 2003 edition of the MUTCD, and portions are now out of date. If there is a conflict with the 2009 edition of the MUTCD, be sure to follow the MUTCD. The major changes include: 1) ROAD MAY FLOOD sign replaces FLOOD AREA AHEAD, 2) ALL-WAY plaques shall be used at all way stop intersections rather than 4-WAY and 3-WAY plaques, 3) Chevron spacing tables are out of date, so use the tables in the MUTCD. The LVR Handbook is out of print and can be obtained while supplies last from Kansas LTAP. An electronic version is available on the KCHA website.



Sign Types. There are generally three major signs types: *regulatory*, *warning* and *guide* signs. Guide signs are not common on county roads, but it is important to recognize the difference between regulatory and warning signs.

Regulatory signs are used to inform road users of selected traffic laws or regulations. The most common type of regulatory sign is the STOP sign. A driver can be issued a citation for violation of a regulatory sign. Regulatory signs are white with black letters or red with white letters.

To be legally enforceable each regulatory sign should be authorized by a resolution of the county commission. An exception to the resolution requirement is signing for no passing zones. Some examples of regulatory signs are shown on the previous page. Note that the sign designations all begin with the letter “R.”

Warning signs call attention to unexpected conditions on or adjacent to a highway or street, and to situations that might not be readily apparent to road users. Warning signs alert road users to conditions that could require a reduction of speed or an action in the interest of safety and efficient traffic operations.

Warning signs can be placed without an authorizing resolution. Traffic citations cannot be issued because of non-compliance with a warning sign. Advisory speed plates, like those found on curve warning signs, do not designate the speed limit. Warning signs are yellow or fluorescent yellow-green unless in a construction zone. See above for typical warning signs; the sign designations all begin with the letter “W.”

Engineering Study and Engineering Judgment. The MUTCD describes the application of traffic control devices, but is not a legal requirement for their installation. The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this MUTCD provides standards, guidance, and options for design and application of traffic control devices, the MUTCD should not be considered a substitute for engineering judgment.

Engineering judgment should be exercised in the selection and application of traffic control devices. A county that does not have an engineer on its staff will need to seek engineering assistance when faced with a non-standard

situation or when the MUTCD calls for an engineering study. An engineering study is a documented study prepared by an engineer.

Retroreflectivity Requirements. Regulatory, warning, and guide signs are important and drivers need to see them both in daylight and darkness. That is why the MUTCD mandates these signs shall be retroreflective. Retroreflectivity is a measure of the amount of light reflected back to the source of light.

Painted signs, even with glass beads, do not meet current requirements and should be removed from service. All sign sheeting is retroreflective, but there are different grades of sheeting.

Federal retroreflectivity standards apply to regulatory, warning, and street name signs. The new retroreflectivity standards vary by the color of the sign, not by the type of sheeting. Engineer Grade is acceptable for white on red and black on white, but not any other signs. Tests have shown Engineer Grade sheeting lasts seven years and High Intensity lasts 12 years. Most counties have elected to use High Intensity Prismatic (ASTM Type III) sheeting for its longer service life.

Sign Management System and Inventory. The 2009 MUTCD requires governments to establish and implement a sign assessment or management method to maintain minimum levels of sign retroreflectivity. Five management methods are available as options to assess and manage minimum retroreflectivity levels for traffic signs:

- 1) Visual nighttime inspections (using calibrated signs, etc.);
- 2) Actual sign retroreflectivity levels measured using a retroreflectometer;
- 3) Replacement based on individual sign life;
- 4) Blanket replacement of all signs in an area; and
- 5) Use of control signs that represent field signs.

These methods can be used alone or in combination. A sign inventory is required for some of these sign management methods, but not all of them.

Street Name Sign Letter Size and Font. New and replacement street name signs on roads with speed limits greater than 25 MPH should have 6 inch upper case letters and 4.5 inch lower case letters. Street names must have an upper case first letter with the remaining letters lower case.

Signs on Township Roads. In counties where townships maintain the local roads, the division of responsibility for maintenance of signs on township roads is somewhat fuzzy and varies from county to county. K.S.A. 8-2005 generally details the authority to approve and place signs on township roads. Counties are responsible for the weight limit signs for bridges and county maintained culverts, and the counties usually maintain the object markers, if any, on these same structures. Townships are responsible for the installation and maintenance of warning signs and guide signs on their roads.

There is some confusion about the authority to erect regulatory signs on township roads. Except in Johnson, Douglas, Sedgwick, Riley, and Shawnee counties, a township

is not considered a local authority authorized to erect such signs. The county commission is the local entity that authorizes the placement of regulatory signs. In some counties the county erects the regulatory signs and the township maintains the signs; in some counties the county commission just passes the resolution and the township installs and maintains the signs; and in some counties the county erects and maintains the regulatory signs. A new road supervisor needs to check and see what policy has been followed in the county.

Crash-Worthy Sign Supports. All sign posts are to be crash-worthy. Ground-mounted crash-worthy sign posts are:

- 4 x 4 wood post
- 3 lb. max U channel
- 2.25" square steel-perforated

KDOT uses a 6 inch x 4 inch post with drilled holes near the ground line, which is crash-worthy. Non standard sign posts such as pipe and doubled steel posts should be replaced.

PAVEMENT MARKINGS

General. Pavement marking criteria are in the MUTCD. Yellow center line pavement markings should be placed on rural roads that carry more than 3,000 vehicles per day with traveled ways 18 ft or wider. When center line markings are placed, no-passing zones shall also be striped.

Edge lines are required on rural arterials with a traveled way width of 20 ft or more and an ADT of 6,000 vehicles per day or greater. Edge lines are recommended on rural arterials with a 20 ft or wider traveled way and an ADT of 3,000 vehicles per day or greater.

At Railroad Crossings. At railroad crossings on paved roads, standard pavement markings are required unless the speed limit is less than 40 MPH and an engineering study has determined that pavement markings are not required. The pavement markings required are both the "RXR" symbol near the advance warning sign and a stop bar about 8 ft from the gate or about 15 ft from the nearest rail.

TORT LIABILITY

General. Claims against the county for injuries or damages that occur on county roads are not uncommon. These type of claims are generally made under the Kansas Tort Claims Act (K.S.A. 75-6101 et. seq.) based on negligence or a road defect. The Kansas Tort Claims Act usually limits damages to \$500,000 and provides immunity for certain activities and conditions. The county is normally named in the court action



No road supervisor likes to defend claims. Not only is it time-consuming and may cost the county money, but also the person making the claim usually states that you did something wrong, or you should have done something you didn't do.

and if an employee is listed in the action, the county must defend the employee if he or she was acting under the scope of employment. The county may decline to defend an employee if there was actual fraud or actual malice in the employee's action. No road supervisor likes these claims; not only is it time-consuming and may cost the county money, but also the person making the claim usually states that you did something wrong, or you should have done something you didn't do.

Claims. A large claim for damages under the Tort Claims Act will begin with an initial notice pursuant to K.S.A. 12-105 (b) (d), which is mailed to the county clerk. The notice is usually prepared by the claimant's attorney and describes the basis of the claim. The county clerk should notify the commissioners as well as the department head and send a copy of the notice to the county's liability insurance carrier.

A small claim for damages due to a road problem is usually phoned into the road and bridge department or county clerk by the citizen. Most liability insurance companies want all claims referred to them. The county should have a procedure in place for noting the problem and referring the citizen to the proper person at the insurance company. In some counties all claims are referred to the county clerk who then refers the citizen to the county's insurance company.

Negligence. Most lawsuits involving highways and bridges are based on a theory of negligence. Negligence must be proven by the plaintiff (claimant) for there to be a recovery in a lawsuit. The plaintiff's attorney is responsible for presenting evidence that will prove negligence. The defense attorney (for the county) will attempt to refute the evidence presented. To be successful in a negligence action, the plaintiff must prove the following:

- 1) The defendant had a duty to the plaintiff;
- 2) The defendant breached the duty;
- 3) The breach was the proximate cause of the accident/incident;
- 4) There were actual damages.

The duty usually comes from a law, rule or regulation, specific relationship, or from the assumption of the duty by the county. In determining liability of the county for a crash on a highway, the court will look at the actions of the road and bridge department and decide whether or not the department performed its duty to the public and to the particular plaintiff.

The question of "foreseeability" is the test used by the court to determine whether or not the county owed a duty to the plaintiff to maintain a safe highway right-of-way, free of the object or defect that caused the particular accident. Foreseeability relates to whether or not a "reasonable person" could or should have concluded that an existing set of circumstances could contribute to a crash/incident that would cause injury or damage, and that the circumstance should have been corrected.

Proximate Cause. Governmental entities have been successful in some vehicular-related cases under the principles of proximate cause. This principle is that the plaintiff has to show a connection between that negligence and the injuries and damage suffered by the plaintiff. For instance if there is a pothole in the road near where a crash occurred, the plaintiff would need to show the connection between the pothole and the crash.

Tort Claims Act Liability and Immunity. The Kansas Tort Claims Act provides for liability of governmental entities under the same theories as recognized in Common Law. However, there are 24 specific immunities (exceptions from liability), and they are the principal means of defense used by municipalities against liability claims. A second common defense is lack of proximate cause.

Of the 24 types of immunities, the following six types especially apply to vehicular claims:

- **Discretionary Function Immunity:** The exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee, whether or not the discretion is abused and regardless of the level of discretion involved. For example it may be discretionary to install STOP signs at a rural intersection. Once the discretionary decision is made to install a STOP sign it becomes a duty to maintain the sign properly.
- **Design Immunity:** The plan or design for the construction or improvement to a road or structure such as a bridge or culvert, if the plan or design is approved in advance of the construction or improvement by the governing body of the governmental entity or some other body or employee exercising discretionary authority to give such approval and if the plan or design was prepared in conformity with the generally recognized and prevailing standards in existence at the time such plan or design was prepared. This design immunity is a major reason why new

construction is always designed to standards.

- *Inspection Immunity:* The failure to make an inspection, or making an inadequate or negligent inspection, of any property other than the property of the governmental entity, to determine whether the property complies with or violates any law or regulation or contains a hazard to public health or safety. For road departments this might mean we are not required to inspect trees off the right-of-way to see if the tree is sound and not likely to fall on a vehicle. We are not required to inspect dams upstream from the road to see if the dam might collapse and flood the road.

- *Natural Condition Immunity:* Snow or ice conditions or other temporary or natural conditions on any public way or other public place due to weather conditions, unless the condition is affirmatively caused by the negligent act of the governmental entity. In this regard it is important to review policies for snow and ice control, if any, and follow those policies. Failure to follow your own policies could be considered negligence.

- *Sign Malfunction or Removal Immunity:* The malfunction, destruction or unauthorized removal of any traffic or road sign, signal or warning device unless it is not corrected by the governmental entity responsible within a reasonable time after actual or constructive notice of such malfunction, destruction or removal. Nothing herein shall give rise to liability arising from the act or omission of any governmental entity in placing or removing any of the above signs, signals or warning devices when such placement or removal is the result of a discretionary act of the governmental entity.

- *Minimum Maintenance Road Immunity:* The existence, in any condition, of a minimum maintenance road, after being properly so declared and signed as provided in K.S.A. 68-5,102, and amendments thereto.

Avoiding Claims. In the search for someone to pay for damages and injuries, it is not uncommon for claims to be made against the county. Claims against the county generally fall into two categories:

- 1) improper or removed signage; or
- 2) negligent design, maintenance or inspection of roads.

The most common crash locations are road-construction sites, intersections, and railroad crossings. With increased use of cell phones and texting, run-off-the-road crashes may become more common. While it is impossible to maintain a road system where there are no crashes, and thus no claims, there are ways to minimize the chance of the claims being successful. Lawsuits involving road defects are very time-consuming, and efforts to minimize crashes and avoid lawsuits will be time well spent.

- *Signage and Liability:* Take signing seriously. There are probably more rules on where and how to place signs than



Images on this page courtesy of FHWA

Specifying a tapered "safety edge" in your pavement contracts can help reduce liability exposure from sharp drop-offs on overlays.

for any other road maintenance activity. So it makes sense that one of the most common claims is that of inadequate signing, or improper maintenance of signs. Signing on public roads is required to comply with the *Manual on Uniform Traffic Control Devices* (MUTCD). Improper signing or improper maintenance is one of the easiest circumstances for the plaintiff to prove, so take signing seriously. Crews that work with signs should be trained in proper installation and maintenance of signs and sign posts.

- *Follow Your Own Policies:* If policies are adopted, you may have a duty to follow those policies, and failure to follow those policies may be negligence. For instance if your county has a policy that brick mailboxes are not allowed, and you allow one to be constructed, the county may be negligent if someone hits the brick mailbox and gets hurt. From a tort liability perspective it is probably better to not have a policy, than to have a policy that is not followed.

- *Minimum Maintenance Roads:* Designating minimum maintenance roads is a protection from liability that should be utilized where possible. There is a standard procedure in K.S.A. 68-5,102 for declaring a minimum maintenance road and posting warning signs to advise the public. If you have a road that does not get regular maintenance and it looks like a minimum maintenance road, that designation should be considered.

- *Construction Projects:* New projects should be built to current standards to obtain design immunity. When you go to professional meetings, you will hear engineers talk a lot about standards, and design immunity is one of the reasons.

- *Railroad Crossings:* The collision of a train with a car typically results in catastrophic injury to the motorist. In fact, the motorist is 11 times more likely to die in a collision involving a train than in other highway collisions. Consequently counties have considerable potential exposure in railroad crossing cases, which represent serious suits.



Improper signing or improper maintenance of signs is one of the easiest circumstances for a plaintiff to prove. The sign above is badly worn and should be replaced.

Warning signs and pavement markings at the crossing are important. Report problems with the crossbucks, signals and crossing to the railroad when discovered.

Recommendations from KCAMP. KCAMP (Kansas County Association Multi-Line Pool) is the liability insurance carrier for 51 Kansas counties. Below are their recommendations developed from property damage and liability claims experiences on county roads.

- 1) Downed signs need to be replaced immediately after notice is received that a sign is down.
- 2) Cover the loads on dump trucks, especially when they are hauling loose debris.
- 3) It would be a good risk management idea to place “Stay Back 75 Feet” signs on the back of our mowers and graders. KCAMP notes big losses with crashes that involve thrown debris within that 75 ft arc, and vehicles pulling into a grader’s blind spots.
- 4) Identify hazards in the right-of-way and report them to the supervisor for removal, i.e., farm equipment, fences, hay bales, etc.
- 5) Avoid operating graders on the wrong side of the road, especially in a hilly area or at a blind curve, without any kind of warning device placed on the road to warn drivers.
- 6) When grading at a railroad crossing, an operator is advised to turn off the radio, AC, and open the door to the cab so that he or she can hear a train.

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SAFETY

General. In all your decisions, “think safety.” If something you are about to do could adversely affect the safety of the public, it is likely not the right decision. For instance, removing a STOP sign that has been in place and working for a long time because you cannot find an authorizing resolution is probably not the right decision. The correct decision would be to ask the county commissioners to pass a resolution authorizing the STOP sign. On maintenance work where there are no plans or design, the project should be thought-out in terms of safety for the traveling public. For instance it may not be a good idea to cut a deep road ditch if the only reason for the ditch is to drain a farmer’s field. Road ditches are for road drainage, not for field drainage.

Roadway Safety. One of the major duties of a road department is to provide a reasonably safe road system. This section offers some suggestions on major items that will help make your road

system safer. Many solutions to safety problems are obvious and can be handled in the daily course of business. However, more difficult problems may need advice from experts and perhaps a traffic signing or safety study. Some technical help is available from peers in other counties, KDOT, Kansas LTAP, and KAC, as well as consultants.

- **Crash Record System:** Although the goal is to minimize the number of crashes, you need to have a crash record system to know where crashes are occurring to see if there are any hot spots or patterns. A crash record system will also identify the predominant crash types in your area. With this information you are better able to develop a plan to make your roads safer.

For most counties a simple system for tracking crash locations will be adequate, such as keeping copies of the accident reports filed in chronological order and creating/ updating a county map with the location of the crashes and a date for each crash. Review each crash report for any indication that road conditions may have contributed to the crash. There are usually not too many crashes on county roads, so maintaining crash records is not a big job, and can usually be handled by office staff.

A local agency can access crash data by either submitting the form at <http://kdotapp.ksdot.org/CrashDataRequestForm/CrashDataRequestForm.aspx> or by emailing KDOT’s accident data group at accidentdata@ksdot.org.

- **Obtaining Accident Reports.** The Sheriff, police, and Highway Patrol send standard accident reports to Topeka. Unfortunately, these reports are not always geo-coded or readily available to the county. Because crash records may not be readily available after they leave the county, ask the sheriff, police and highway patrol to send you the crash reports as crashes occur. For privacy purposes it is a good idea to black out the date of birth and other personal information of those persons listed on the accident report.

- **Problem-Reporting System.** Have a procedure in place to document calls and reports received by your department concerning safety issues. Check reports received and take prompt action if the reported issue is safety-related. Make sure your employees report safety issues they see on the roads. Deputies, mail carriers, and school bus drivers have additional eyes on the road, and many counties ask these people to report safety issues they observe.

- **Damaged or Removed Signs:**

It is not uncommon for stop and warning signs to be knocked down by vandals, farm equipment, or wind.

It is important for a county to have a program to discover downed signs and repair them promptly. The Sheriff’s office should have the number to call to report a downed sign after normal working hours.

- **Pavement Edge Drop-offs:** Drop-offs at the pavement edge may cause a vehicle to lose control if a vehicle strays off

Have a procedure in place to document calls and reports received by your department concerning safety issues. Check reports received and take prompt action if safety-related. Make sure your employees report safety issues they see on the roads.

of the pavement. These drop-offs occur at isolated locations such as the inside and outside of curves, but may occur along an entire route due to built-up overlays, or erosion. Make note of pavement edge drop-offs, and fill them as time is available. Shouldering machines, “safety edge” type paving attachments and tailgate conveyors are available to place rock or dirt in these drop-offs. See http://safety.fhwa.dot.gov/roadway_dept/pavement/safedge.

- *Uniform Roads:* Drivers have a tendency to drive in accordance with general road conditions. It is a good policy to maintain roads so that road conditions do not surprise a driver. For instance, a rough spot in a good road is more likely to surprise a driver and lead to a crash than a rough spot in a bad road.

- *Local Road Safety Plans.* A local road safety plan is a good tool for systematically identifying safety issues in the jurisdiction and prioritizing safety improvements for funding. These plans often involve participation of law enforcement, emergency management, engineering and education in identifying safety risks and solutions. A basic guide for creating a plan can be found at http://safety.fhwa.dot.gov/local_rural/training/fhwasa12017/.

- *Training:* Employees should be trained to perform their jobs properly. Certain training is required by law, such as flagger training. There is optional training that will help job performance and should lead to fewer claims. It is good practice to keep a file documenting employee training.

The road supervisor, and perhaps the assistant supervisor, should have road safety training. Every county has a substantial road system with fairly high speed traffic. Issues relating to traffic safety are common and someone in a responsible position should be trained to handle routine items.



ROAD DAMAGE

Our roads are damaged by people driving on them as well as by contractors using the right-of-way and road as a work area. Kansas law (K.S.A. 8-1913) states that persons driving legally on our roads are not responsible for road damage, but if the damage is from an illegal action, the person is liable for road damage. People working on our right-of-way are, by common law, liable for damage they cause, whether they are working legally or illegally.

For those driving on our roads the most common illegal activities are:

1. Losing control, running off the road and hitting a guardrail or causing other damage.
2. Driving a dozer, ATV or any vehicle in the ditch area.
3. Driving track equipment on the road.
4. Pulling a truck down a mud road with a dozer.
5. Tearing up a mud road with 4-wheelers.

Recovery for damages is based on the common law rule



Johnson County Public Works

Culvert damaged by utility installation.

for damages: If someone damages county property illegally, the county is entitled to compensation. The driver does not have to be ticketed; this is a civil action, not a criminal action. The normal procedure is to keep track of the cost of the repair and then send an invoice to the person responsible. If the person fails to pay, then legal action may be necessary.

Persons using our roads as a work area are responsible for damage they cause. The most common damage is by utility contractors (see example of culvert damage on this page), and unauthorized blading and excavation by landowners and energy companies. Prevention or avoidance is better for everyone involved.

While random acts of damage by landowners are difficult to anticipate and avoid, being proactive with utility contractors and energy companies will be helpful. It would be a good idea to make a site visit at the initiation of any work where there is potential for road damage. Talk with the site foreman and share contact information. Discuss possible illegal operations as well as your concern for damage to the road. Also discuss your expectations on restoration of the road. Remember that you are only interested in public safety and restoration of the right-of-way.

During the work, stop by and check for road damage. If damage does occur, ask the contractor to fix it. If the county has to repair any damage to the road or right-of-way, you can be reimbursed. Take some pictures to document the damage. Just like damage from persons driving our roads, the normal procedure is to keep track of the cost of the repair and then send an invoice to the person responsible. If the person fails to pay, then legal action may be necessary.



DRAINAGE

There is an old saying “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 and contentious issues.

The general drainage law in Kansas as it applies to rural areas is that, at the property line the landowner is not to change the course (location), current (speed), or content (volume) if it will damage the downstream landowner. Violating the general drainage law is not a criminal violation; it is a civil matter, and a person could be liable for damages caused by their actions. There is also a law that prohibits blocking a natural drainage course: KSA 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.”

The reason for a road ditch is to provide drainage for the road. A ditch collects precipitation that falls on the road, and provides a more stable base by draining water that could saturate the base. Where adjacent land slopes toward the road, the road ditch intercepts the water coming off the fields before it runs onto the road. Many rural residents think the road ditch is to improve drainage on their property, and that once any water runs into the road ditch or a culvert it becomes the county’s water, and any damage caused by the county’s water is the responsibility of the county. These perceptions are untrue; surface water does not belong to the county, it belongs to the state, and road ditches are to provide drainage for the road.

When roads were opened in the 1800’s, road ditches had not yet been invented. The only maintenance a road received was from a horse-pulled drag that knocked down the ridges into the ruts and thereby smoothed the road. Since there was no thought of ditches and drainage, adequate right-of-way to construct ditches was not provided when



Labette County / S. Krider

This landowner-constructed dam, created to block a ditch, violates K.S.A. 24-206.



N. Bowers

The “shoulder washing” evident at this site indicates the ditch needs to be larger to handle drainage.

the right-of-way width was established. So with the narrow right-of-way width, counties can seldom build a ditch large enough to handle much drainage. The ditch is usually deep enough for road purposes if heavy rainfall events do not cause the shoulder of the road to wash. The photograph on page 42 shows road damage along the shoulder indicating that the ditch needs to be larger.

When doing drainage work along the road, refrain from changing the natural drainage. If you change the drainage pattern, the county becomes responsible for maintaining the new drainage pattern. Mother Nature will consistently make you pay for changing the natural drainage by erosion, sedimentation and the need for ongoing maintenance.

In eastern and central Kansas people don't want water running across their cultivated fields; surface water may cause erosion, sedimentation, and wet areas. The three main requests of counties by adjacent landowners are:

- 1) Make the ditch deeper to drain a wet spot in the field.
- 2) Construct a berm along the right-of-way line to keep water in the ditch.
- 3) Change the location or remove a crossroad culvert to keep water from running across a field. This work may benefit the landowner but is changes the natural drainage.

There are federal laws and regulations (Clean Water Act) that require a permit from the U.S. Army Corps of Engineers to work in Waters of the U.S. Wetlands and

natural channels are considered Waters of the US. In the past it was fairly routine to drain wetlands by deepening a ditch and straightening channels. These two items now require a permit from the Corps, and, in truth, it is unlikely a permit would be approved to do this type of work.

There are special considerations for bridges and culverts. If you install a bigger bridge or culvert, you are likely making the flow more like it was before the road and bridge were originally constructed, and this is seldom an issue with the landowners. Installing a smaller bridge or culvert or raising the road can cause backwater upstream and/or increase the velocity immediately downstream. So a smaller bridge or culvert should only be considered where these factors will not be an issue.

People who own land that floods may think it is the county's obligation to alleviate flooding. However, there have been a number of court cases related to flooding, and the courts have stated that governments are not required to solve flooding problems. The general rule is as follows:

When doing drainage work along the road, refrain from changing the natural drainage. If you change the drainage pattern, the county becomes responsible for maintaining the new drainage pattern. Mother Nature will consistently make you pay for changing the drainage by erosion, sedimentation and the need for ongoing maintenance.

“. . . established 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.” Baldwin v. City of Overland Park, 205 Kan. 1, 468 P.2d 168 (1970). And in another case “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.’ [Citation omitted.]” 205 Kan. at 7, 468 P.2d 168.



ANNUAL PERMITS AND REPORTS

KDHE Industrial Stormwater Permits. Certain types of facilities are required to have an Industrial Stormwater Permit. These sites include landfills, transfer stations, quarries, hot mix plants, and shops that service busses. The Industrial Stormwater Pollution Prevention Plan must be

prepared by an engineer. It provides for good housekeeping, spill response and general water pollution control. More information on this permit is available on the KDHE Web site: <http://www.kdheks.gov/stormwater>.

KDHE Construction Stormwater Permits. Any construction activity that disturbs 1 acre or more, and any maintenance activity that disturbs 5 acres or more must obtain a Construction Stormwater Permit from KDHE. The permit is by project and is for a one-year period. The county will be billed an annual fee until grass cover is established and you terminate the permit. The permit fee as of 2009 was \$60 per year. This permit is discussed in more detail in the section on Environmental Permits; see page 24.

KDHE Underground and Above Ground Storage Tank Permits. The Kansas Department of Health & Environment (KDHE) issues annual permits for underground tanks of any size and above ground tanks 660 gallons and larger. The KDHE permit is a calendar year permit, and a renewal is mailed to counties automatically. This item was discussed in more detail in the section on Fuel and Asphalt Storage on page 25.

State Conservation Commission Quarries and Gravel Pits Reports. The State Conservation Commission (SCC) is responsible for administering the Surface-Mining Land Conservation and Reclamation Act (Mined Land Reclamation Program). The Act requires that producers who mine industrial materials or minerals of commercial value such as sand, gravel, limestone, clay, gypsum, shale, sandstone, silt, caliche, volcanic ash or salt be licensed to operate a mine, register their mining sites, file a reclamation plan for each site, submit a reclamation bond and reclaim mining sites upon completion of mining operations. Sites opened before 1994 do not usually need a reclamation plan. This Act affects counties that own or lease quarries and gravel pits. Annual report forms are sent out in January for active sites. For more information visit the Department of Agriculture website at <https://agriculture.ks.gov/divisions-programs/division-of-conservation/surface-mining-reclamation>.

County Engineer/Road Supervisors Annual Report. K.S.A. 68-540 requires each county to submit an annual report to the county commission and KDOT by April 15 of each year for activities the previous year. KDOT's Bureau of Local Projects sends out standard forms and instructions in January and February of each year. This annual report tracks funds expended by counties throughout the state, and it is important to receive a report from each county. The purpose is to track county road data over a period of years to quantify the condition of our road network, and to have data to justify the need for additional funding. Your report is essential information for this effort, and will help the counties in the long term. The report is fairly simple and should be submitted to KDOT by April 15. Some counties track data in more detail and submit a more complete report to the county commission.



NEED MORE HELP?

The Kansas Local Technical Assistance Program has a quarterly newsletter of road-and-bridge related information and a library of training or reference publications and videos on DVD or VHS. Most of these products are free. Learn more at <http://www.ksltap.org> or call (785) 864-2590.

The Kansas Association of Counties has a Local Road Engineer on staff to provide technical expertise to county road officials. Call (785) 272-2585.

See the next page for a sample planning calendar to help you keep up with some of the dates important to a road supervisor. ■

Road and Bridge Planning Calendar

January

January 1 is the beginning of a new budget year. Compare this year's budget with last year and note any differences that will affect your operations and programs.

Check for Spring LTAP course offerings at: <http://www.ksltap.org>.

Renew annual permits for storage tanks.

Submit report to State Conservation Commission for quarries and pits.

Check for the date the biennial bridge inspection is due.

Prepare cost data for the KDOT annual report.

February

District 6 Highway Officials Meeting in Garden City.

Prepare annual asphalt road maintenance plan.

Check your SPCC plan for required documentation and training.

Check that your spill response plan is posted.

Check that all employees that will be flagging have received training.

March

District 1 & 2 Highway Officials Meeting (rotating location).

April

District 3 (Colby), 4 (Chanute), & 5 (Hutchinson) Highway Officials Meetings.

Annual County Engineers/Road Supervisors Report to be submitted to KDOT by April 15.

Bid liquid asphalt.

May

KCHA Spring Meeting (no set location).

June

Late June is a good time to bid salt.

July

County commission sets next year's preliminary budget by August 1.

August

The final day to publish the proposed budget and hearing notice is August 5.

Attend county budget hearing.

Check for Fall LTAP course offerings at: <http://www.ksltap.org>.

September

MINK Regional Local Roads Meeting in St. Joseph, MO, at end of month.

October

District 3 Highway Officials Meeting (rotating location).

November

KAC Annual Meeting (rotating location); includes KCHA Fall Meeting.

December

Make final budget projections.

Resolution by commissioners to transfer excess funds to Special Machinery Fun.

Review open Construction Stormwater Permits and file Notice of Termination for those with adequate permanent cover.

Kansas LTAP
The University of Kansas
KU Transportation Center
1535 W. 15th St., Room G520
Lawrence, Kansas 66045-7609

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Kansas Local Technical Assistance Program

Kansas LTAP serves road and bridge and public works officials through training, information-sharing, and technology transfer activities. Kansas LTAP also provides both one-on-one problem solving and wider outreach at state, regional and national professional meetings. Services include:

Newsletters. Each year four issues of the *KS LTAP Newsletter* are provided without charge to city, county, state, and township highway agencies across Kansas. The newsletter covers a broad range of technical topics and policy news of interest to road and bridge officials.

Training. Each year Kansas LTAP holds dozens of workshops across the state. Common topics include road maintenance (asphalt, concrete, gravel), culverts and drainage, snow and ice control, work zone signing, workplace safety, and roadway safety. Visit our website and click on "Training Calendar" to view a list of upcoming training opportunities.

Kansas Roads Scholar Program. This program provides training to increase knowledge of road maintenance procedures and improve technical, supervisory, and managerial/administrative skills. Kansas LTAP administers this program for the Kansas County Highway Association and the American Public Works Association's Kansas Chapter. Other partners are the Kansas Association of Counties and the Kansas DOT. All Kansas public works and road and bridge employees are welcome to participate in the program. More information is available through KS LTAP at (785) 864-2594 and at <http://www.ksroadsscholar.org>.

Lending Library. Kansas LTAP loans training programs on DVD and provides printed materials, free, to hundreds of individuals and road departments each year. Resource offerings are available in a searchable format on the Kansas LTAP website.

Website. Visit <http://www.ksltap.org> to find a calendar of training opportunities in Kansas, register for workshops, search for and borrow a training video, order technical materials, download a newsletter, read about current transportation research at the KU Transportation Center, and link to related sites.