County Road Issues

Updated

November 5, 2014

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Resources

- County Commissioner handbook & Purchasing Handbook from OSU
  http://agecon.okstate.edu/ctp/handbooks.asp

- **www.occedb.org - FAQ page**

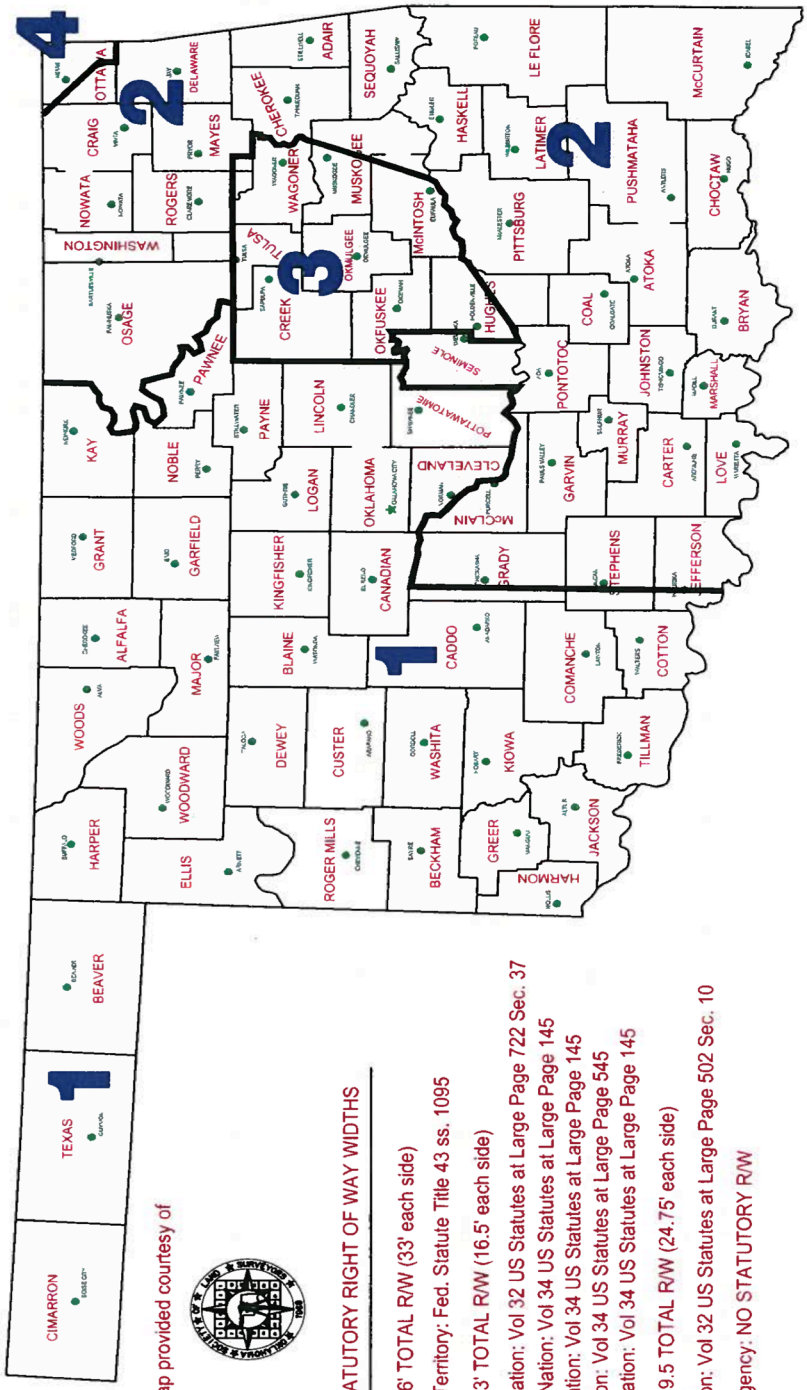
- OSCN – Oklahoma State Courts Network; www.oscn.net (FREE!!)

- Westlaw: Paid subscription

- **1982 OK AG 23**

- **Chris Schroder – chriss@okacco.com; 405-760-9713**
  OCCEDB, Administrative Assistant / Accounting

Oklahoma Statutory R/W Widths



Map provided courtesy of

OKLAHOMA STATUTORY RIGHT OF WAY WIDTHS

1 4 RODS - 66' TOTAL R/W (33' each side)
Oklahoma Territory: Fed. Statute Title 43 ss. 1095

2 2 RODS - 33' TOTAL R/W (16.5' each side)
Cherokee Nation: Vol 32 US Statutes at Large Page 722 Sec. 37
Chickasaw Nation: Vol 34 US Statutes at Large Page 145
Choctaw Nation: Vol 34 US Statutes at Large Page 145
Osage Nation: Vol 34 US Statutes at Large Page 545
Seminole Nation: Vol 34 US Statutes at Large Page 145

3 3 RODS - 49.5 TOTAL R/W (24.75' each side)
Creek Nation: Vol 32 US Statutes at Large Page 502 Sec. 10

4 Quapaw Agency: NO STATUTORY R/W

Oklahoma Statutory R/W Widths

1 rod = 16.5 feet

Organic Act – 1890, Oklahoma Territory

Section Line width = 66'
(US Code 43 § 1095 – restates the same as below)

§ 23. Relating to public highways
That there shall be reserved public highways four rods wide between each section of land in said Territory, the section lines being the center of said highway; but no deductions shall be made, where cash payments are provided for, in the amount to be paid for each quarter section of land by reason of such reservation. But if the said highway shall be vacated by any competent authority, the title to the respective strips shall inure to the then owner of the tract of which it formed a part of the original survey. May 2, 1890, c. 182, § 23, 26 Stat. 92.

"Section Line Right Of Way Without a Section Line Road", David Henke, 1978

Creek Nation: 1 ½ rods (Total = 49.5') – Act of June 20, 1902, ch. 1323, { 10, 32 Stat. 502
Cherokee Nation: 1 rod (Total = 33') – Act of July 1, 1902, ch. 1375, { 37, 32 Stat. 722.
Choctaw, Chickasaw and Seminole Nations: 1 rod (Total = 33') – Act of April 26, 1906.
Osage Nation: 1 rod (Total = 33') – Act of June 28, 1906, ch. 3572. { 10, 34 Stat. 539.

No reservation was found for the area in the far NE corner of the state that was occupied by the Indians under the authority of the Quapah Indian Agency. The district attorney's office in Ottawa County and the Chief of the Legal Division of the Oklahoma Department of Transportation report that there is no section line right of way in that area of the state.

Oklahoma Constitution

Article 16 - Public Roads
Section Article 16 section 2 - Acceptance of lands granted or reserved for highway

§ 2. Acceptance of lands granted or reserved for highway.
The State of Oklahoma hereby accepts all reservations and lands for public highways made under any grant, agreement, treaty, or act of Congress: Provided, This section

shall not be construed to prejudice the vested rights of any tribe, allottee, or other person to any such land.

County Highway System / County Roads

2003 OK AG 10

In general, what is considered a "public road" with regard to roads under the jurisdiction of county commissioners?

1. Section lines opened and maintained. (69 Title § 1201)

2. Roads established by Board of County Commissioners. (69 Title § 646)

3. Roads acquired by owner dedicating for public use, common law dedication.

4. Roads part of new plans approved by the Board of County Commissioners. (69 Title § 601.1)

5. Roads acquired by prescription through exclusive, continuous and adverse use of the road by the public for a 15-year period. (Title 12 § 93, Statute of Limitation for real property)

County Highway System and Municipalities

Mileage and Responsibility

The County Highway System is defined as any road not on the State Highway System and also states that Commissioners construct/maintain roads that "best" serve the most people. **(Title 69 § 601)** This same section exempts municipalities that have laws that govern their streets. **(Title 69 § 601.2)**

"¶6 All "public roads" in the county, less those within a municipality or those on the State Highway System, are by operation of law on the county highway system. Roads within the corporate limits of municipalities are under the maintenance jurisdiction of the municipality, subject to certain nonrelevant exceptions. *Terry v. Edgin*, supra. The criteria, therefore, are whether the road is "public" and not within a municipality and not on the State Highway System. If these criteria are met, the road is on the county highway system." (**1982 OK AG 236)**

The Oklahoma Tax Commission uses county road mileage, county land area and county population to allocate fuel taxes and motor vehicle collection taxes out to a counties' County Highway Fund. The Tax Commission receives the certified County Road mileage from the Oklahoma Department of Transportation, as it exists on January 1st of each year. **(Title 69 § 316)**

Any law more specific may govern over a law that is in more general terms. "The rules of statutory construction dictate that a more "specific statute will control and act as an exception to a statute of general applicability." *See Duncan v. City of Nichols Hills*, 913 P.2d 1303, 1310 (Okla. 1996). " **(2008 OK AG 9)**

The following is a breakdown on what the counties' road responsibilities are as it relates to streets and roads within municipalities. Any agreements are to be approved by the District Attorney. **(Title 69 § 601(A))**

1. Any county and municipality or multiple counties or municipalities **may** enter into an agreement to maintain or contract roads or streets. (**Title 69 § 1903)**

2. The Board of County Commissioners **may** enter into an agreement to construct, make improvements on roads and/or bridges within a municipality and if part of the County Highway System, **(Title 11 § 36-112(C))** or if the project is on a road that is a continuation of the county's County Highway System. (**Title 69 § 603)**

3. The Board of County Commissioners **may** enter into an agreement to utilize county labor, equipment and supplies on roads and/or bridges within a municipality that has a population greater that 5,000, but less than 15,000 if the municipality has passed a sales tax that apportions part of the tax towards city street construction or maintenance. **(Title 11 § 36-113(C))**

4. The board of county commissioners **may** construct, improve, repair, or maintain any of the streets of a municipality if the county has a population in excess of five hundred thousand (500,000) persons according to the most recent Federal Decennial Census. The agreements entered into pursuant to the provisions of this subsection may be performed without regard to whether the municipality has passed a sales tax with proceeds earmarked to construct, improve, repair or maintain any of the streets or roadways of such municipality. **(Title 11 § 36-113(D))**

5. A county's road mileage includes all roads within a municipality with a population less than 2,500. **(Title 69 § 316)** The Oklahoma Department of Transportation adds this to a **county's road mileage** and provides this to the Oklahoma Tax Commission.

6. The Board of County Commissioners **may** enter into an agreement to have all the maintenance and construction responsibility of all roads and streets within a municipality that has a population of 2,500 to less than 5,000. **(Title 69 § 316) (Title 11 § 36-113(B))** This agreement must be forwarded to Planning Division at the Oklahoma Department of Transportation to be included in the **county's road mileage**.

See also:

2011 OK AG 23 (note question #1 not valid since 2012) & Board acts as a whole.
2008 OK AG 9

Annexation

The municipality is required to include the road and road right-of-way if it is next to the parcels of land being annexed. **(Title 11 § 21-103(C))**

CERTIFICATION OF COUNTY ROAD
MILEAGE
(As of January 1, 2014)

In compliance with Title 69, O.S. Section 316, as amended, the Oklahoma State Transportation Commission hereby certifies that the following tabulation shows the county road mileage of each county and county road mileage of the state as such mileage existed on the first day of January, 2014.

Dated this 5th day of May, 2014.

ATTEST: OKLAHOMA STATE TRANSPORTATION COMMISSION

Vice Chairman **Chairman**

MILES OF RURAL COUNTY SYSTEM ROADS BY COUNTIES:

COUNTY	MILEAGE	COUNTY	MILEAGE
01-Adair	769.40	39-Latimer	468.33
02-Alfalfa	1,364.27	40-LeFlore	1,423.76
03-Atoka	827.03	41-Lincoln	1,548.74
04-Beaver	2,103.27	42-Logan	1,201.61
05-Beckham	1,153.86	43-Love	425.77
06-Blaine	1,305.44	44-McClain	560.19
07-Bryan	1,052.16	45-McCurtain	1,464.12
08-Caddo	1,913.74	46-McIntosh	855.46
09-Canadian	981.54	47-Major	1,213.50
10-Carter	832.11	48-Marshall	491.63
11-Cherokee	940.70	49-Mayes	1,123.07
12-Choctaw	770.37	50-Murray	354.06
13-Cimarron	1,514.26	51-Muskogee	1,246.75
14-Cleveland	305.50	52-Noble	1,123.20
15-Coal	515.86	53-Nowata	675.20
16-Comanche	1,254.15	54-Okfuskee	709.63
17-Cotton	953.54	55-Oklahoma	548.41
18-Craig	1,034.69	56-Okmulgee	943.82
19-Creek	1,172.80	57-Osage	1,700.45
20-Custer	1,393.34	58-Ottawa	828.05
21-Delaware	1,161.80	59-Pawnee	839.61
22-Dewey	1,147.48	60-Payne	1,074.28
23-Ellis	1,281.27	61-Pittsburg	1,270.93
24-Garfield	1,867.53	62-Pontotoc	895.26
25-Garvin	1,060.48	63-Pottawatomie	1,107.75
26-Grady	1,497.28	64-Pushmataha	693.56
27-Grant	1,769.09	65-Roger Mills	1,257.97
28-Greer	845.27	66-Rogers	1,114.38
29-Harmon	772.53	67-Seminole	852.85
30-Harper	1,022.85	68-Sequoyah	831.07
31-Haskell	625.61	69-Stephens	1,122.27
32-Hughes	881.26	70-Texas	2,495.25
33-Jackson	1,200.03	71-Tillman	1,424.44
34-Jefferson	709.95	72-Tulsa	698.18
35-Johnston	528.53	73-Wagoner	888.71
36-Kay	1,452.58	74-Washington	514.80
37-Kingfisher	1,554.96	75-Washita	1,671.27
38-Kiowa	1,548.17	76-Woods	1,408.54
		77-Woodward	1,401.06
		GRAND TOTAL	**83,552.63**

Strategic Asset & Performance Management Division
GIS Management Branch, Road Inventory Section

References

Title 69. Roads, Bridges, and Ferries
Chapter 1 - Oklahoma Highway Code of 1968
Article 6 - County Road System
Section 601 - County Highway System - Authority and Duties of Boards of County Commissioners

A. **The county highway system shall be composed of all public roads within any county, less any part of any road or roads which may be designated as a state highway by the State Transportation Commission**. It shall be the duty of the board of county commissioners in each county to construct and maintain as county highways those roads which **best serve** the most people of the county. For this purpose the board of county commissioners is authorized to use any funds which are in the county highway fund, subject to statutory restrictions on the use of any of such funds, together with any money or item of value derived from any agreement entered into between the county and the Transportation Commission, the federal government, this state, any other county or political subdivision of this state or other governmental entity, or any citizen or group of citizens who have made donations for that purpose. **The boards of county commissioners of the various counties shall have exclusive jurisdiction over the designation, construction and maintenance and repair of all of the county highways and bridges therein**. **All interlocal cooperation agreements made pursuant to this section between counties and those political subdivisions or citizens of a county shall be submitted to the district attorney of each of the counties subject to the agreement for approval.** All other interlocal cooperation agreements shall be submitted and approved in accordance with Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes.
B. The boards of county commissioners are hereby authorized to establish road improvement districts as provided by law for existing roads in the unincorporated areas of counties. The boards of county commissioners may also have improvements made on existing roads in unincorporated areas of counties on a force account basis.

Title 69. Roads, Bridges, and Ferries
Chapter 1 - Oklahoma Highway Code of 1968
Article Article 6 - County Road System
Section 601.2 - Exemptions

This act shall not apply to cities, towns, planning district or any other area where jurisdiction is otherwise vested by law in a political subdivision to establish standards for the dedication of roads or bridges.

Title 69. Roads, Bridges, and Ferries
Chapter 1 - Oklahoma Highway Code of 1968
Article Article 3 - State Highway Administration
Section 316 - Certification of County Road Mileage

The Commission, on or before the first day of June of each year, shall certify to the Oklahoma Tax Commission the county road mileage of each county and the total county road mileage of the state as such mileage existed on the first day of January of such year. **Such mileage shall be the computation of the existing road mileage for counties including any mileage represented by streets or roads in municipalities with a population of less than two thousand five hundred (2,500) and any other streets and roads in municipalities with a population of less than five thousand (5,000) that the county has agreed to construct, maintain, or repair.** Any roads removed from the State Highway System by the Transportation Commission and returned to the county road system shall be added to the total county road mileage of the said county.

Title 69. Roads, Bridges, and Ferries
Chapter 1 - Oklahoma Highway Code of 1968
Article Article 19 – Miscellaneous
Section 1903 - Agreements to Construct, Improve, Repair or Maintain City Streets

A. The Department of Transportation may by agreement with the governing board of a city, incorporated town or other municipality having a population less than five thousand (5,000), construct, improve, repair or maintain any of the streets of such city, town or municipality.
B. **A county and a municipality or any two or more counties or municipalities may contract with each other to construct, improve, repair or maintain any of the roads, streets or highways of the other parties to the contract.** No party to the contract shall be liable for the acts or omissions of the other parties or for failure to inspect or supervise the performance of the other parties.

Title 11. Cities and Towns
Chapter 1 - Oklahoma Municipal Code
Article Article XXXVI - Streets and Roads
Section 36-112 - Intersections and Crossings - Participation by Counties and State Highway Commission in Street Improvements

A. The municipal governing body, in its discretion, may provide for the payment of the cost for improving street intersections and alley crossings out of the general revenues.
B. The State Highway Commission is authorized in its sole discretion to enter into agreements with the governing body of any municipality for participation with State Highway Construction and Maintenance Funds in the cost of any improvements on streets which are a part of the State Highway System. Such agreements may provide for the award and supervision of the contract by the municipality. The state's share of the cost is to be due and payable upon completion of the project.
C. **Any board of county commissioners, in its discretion, may enter into agreements with the governing body of any municipality for participation with County Highway Funds in the cost of any improvements on streets which are in the limits of the municipality and are part of the County Highway System.** Such agreements may provide for the award and supervision of the contract by the municipality. The county's share of the cost is to be due and payable upon completion of the project.

Title 69. Roads, Bridges, and Ferries
Chapter 1 - Oklahoma Highway Code of 1968
Article Article 6 - County Road System
Section 603 - Contracts for Grading, etc., of Streets Within Incorporated Cities or Towns

The board of county commissioners of any county may, under the direction of the Commission, contract for grading, draining or hardsurfacing any street within any municipality where such street is a continuation of or a connecting link in the State or County Highway System or if the county and the municipality have entered into an agreement pursuant to Section 36-113 of Title 11 of the Oklahoma Statutes for the construction, improvement, repair or maintenance of municipal streets.

Title 19. Counties and County Officers
Chapter 10 - County Commissioners
Section 339 - General Powers of Board

A. The board of county commissioners shall have power:
1. To make all orders respecting the real property of the county, to sell the public grounds of the county and to purchase other grounds in lieu thereof; and for the purpose of carrying out the provisions of this section it shall be sufficient to convey all the interests of the county in those grounds when an order made for the sale and a deed is executed in the name of the county by the chair of the board of county commissioners, reciting the order, and signed by the chair and acknowledged by the county clerk for and on behalf of the county;
2. To audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county or appropriated for its benefit;
3. To construct and repair bridges and to open, lay out and vacate highways; provided, however, that when any state institution, school or department shall own, lease or otherwise control land on both sides of any established highway, the governing board or body of the same shall have the power to vacate, alter or relocate the highway adjoining the property in the following manner:
If it should appear that it would be to the best use and interest of the institution, school or department to vacate, alter or relocate such highway, the governing board or body shall notify the board of county commissioners, in writing, of their intention to hold a public hearing and determine whether to vacate, alter or relocate the highway, setting forth the location and terminals of the road, and all data concerning the proposed right-of-way if changed or relocated, and shall give fifteen (15) days' notice of the hearing by publication in some newspaper in the county or counties in which the road is located, and the hearing shall be held at the county seat of the county in which the road is located, and if a county line road, may be heard in either county. At the hearing testimony may be taken, and any protests or suggestions shall be received as to the proposed measure, and at the conclusion thereof if the governing board or body shall find that it would be to the best use and interest of the institution, school or department, and the public generally, they may make an appropriate order either vacating, altering or relocating the highway, which order shall be final if approved by the board of county commissioners. The institution, school or department may by agreement share the cost of changing any such road. No property owner shall be denied access to a public highway by the order;
4. To recommend or sponsor an employee or prospective employee for job-related training and certification in an area that may require training or certification to comply with state or federal law as such training or certification is provided by the Department of Transportation, the Federal Highway Administration, or any other state agency, technology center school, or university;
5. Until January 1, 1983, to furnish necessary blank books, plats, blanks and stationery for the clerk of the district court, county clerk, register of deeds, county treasurer and county judge, sheriff, county surveyor and county attorney, justices of the peace, and constables, to be paid for out of the county treasury; also a fireproof vault sufficient in which to keep all the books, records, vouchers and papers pertaining to the business of the county;
6. To set off, organize and change the boundaries of townships and to designate and give names therefor; provided, that the boundaries of no township shall be changed within six (6) months next preceding a general election;
7. To lease tools, apparatus, machinery or equipment of the county to another political subdivision or a state agency. The Association of County Commissioners of Oklahoma and the Oklahoma State University Center for Local Government Technology together shall establish a system of uniform rates for the leasing of such tools, apparatus, machinery and equipment;
8. To jointly, with other counties, buy heavy equipment and to loan or lease such equipment across county lines;
9. To develop personnel policies for the county with the approval of a majority of all county elected officers, as evidenced in the minutes of a meeting of the board of county commissioners or the county budget board;
10. To purchase, rent, or lease-purchase uniforms, safety devices and equipment for the officers and employees of the county. The county commissioners may pay for any safety training or safety devices

and safety equipment out of the general county funds or any county highway funds available to the county commissioners;
11. To provide incentive awards for safety-related job performance. However, no employee shall be recognized more than once per calendar year and the award shall not exceed the value of Two Hundred Fifty Dollars ($250.00); further, no elected official shall be eligible to receive a safety award;
12. To provide for payment of notary commissions, filing fees, and the cost of notary seals and bonds;
13. To do and perform other duties and acts that the board of county commissioners may be required by law to do and perform;
14. To make purchases at a public auction pursuant to the county purchasing procedures in subsection D of Section 1505 of this title;
15. To deposit interest income from highway funds in the general fund of the county;
16. To submit sealed bids for the purchase of equipment from this state, or any agency or political subdivision of this state;
17**. To utilize county-owned equipment, labor and supplies at their disposal** on property owned by the county, public schools, two-year colleges or technical branches of colleges that are members of The Oklahoma State System of Higher Education, the state **and municipalities according to the provisions of Section 36-113 of Title 11 of the Oklahoma Statutes.** Cooperative agreements may be general in terms of routine maintenance or specific in terms of construction and agreed to and renewed on an annual basis. Work performed pursuant to Section 36-113 of Title 11 of the Oklahoma Statutes shall comply with the provisions of this section;
18. To enter into intergovernmental cooperative agreements with the federally recognized Indian tribes within this state to address issues of construction and maintenance of streets, roads, bridges and highways exclusive of the provisions of Section 1221 of Title 74 of the Oklahoma Statutes;
19. To execute hold harmless agreements with the lessor in the manner provided by subsection B of Section 636.5 of Title 69 of the Oklahoma Statutes when leasing or lease-purchasing equipment;
20. To accept donations of right-of-way or right-of-way easements pursuant to Section 381 et seq. of Title 60 of the Oklahoma Statutes;
21. To establish by resolution the use of per diem for specific purposes in accordance with the limitations provided by Sections 500.8 and 500.9 of Title 74 of the Oklahoma Statutes;
22. To apply to the Department of Environmental Quality for a waste tire permit to bale waste tires for use in approved engineering projects;
23. To enter into the National Association of Counties (NACo) Prescription Drug Discount Program; and
24. To work with federal, state, municipal, and public school district properties in an effort to minimize cost to such entities.
B. The county commissioners of a county or, in counties where there is a county budget board, the county budget board may designate money from general county funds for the designated purpose of drug enforcement and drug abuse prevention programs within the county.
C. When any lease or lease purchase is made on behalf of the county by the board pursuant to the provisions of this section, the county shall be allowed to have trade in values for transactions involving The Oklahoma Central Purchasing Act.
D. In order to timely comply with the Oklahoma Vehicle License and Registration Act with regard to county vehicles, the board of county commissioners may, by resolution, create a petty cash account. The board of county commissioners may request a purchase order for petty cash in an amount necessary to pay the expense of license and registration fees for county motor vehicles. Any balance in the petty cash account after the license and registration fees have been paid shall be returned to the account or fund from which the funds originated. The county purchasing agent shall be the custodian of the petty cash account, and the petty cash account shall be subject to audit.
E. When the board of county commissioners approves an express trust, pursuant to Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes, for the purpose of operating a county jail, the trustees of the public trust may appoint commissioned peace officers, certified by the Council on Law Enforcement Education and Training, to provide security for inmates that are required to be transported outside of the detention facility, and investigate violations of law within the detention facility. Other personnel necessary to operate the jail may be employed and trained or certified as may be required by applicable state or federal law.

Title 11. Cities and Towns

Chapter 1 - Oklahoma Municipal Code
Article Article XXXVI - Streets and Roads
Section 36-113 - Municipalities - Construction, Improvement, Repair or Maintenance of Street - Road Mileage

A. The Department of Transportation may, or the board of county commissioners of any county or federally recognized tribal government shall, by agreement with the governing body of a municipality having a population less than five thousand (5,000), construct, improve, repair or maintain any of the streets of the municipality.
B. The board of county commissioners may construct, improve, repair, or maintain any of the streets of a municipality having a population of less than five thousand (5,000) persons subject to agreement between the governing bodies of the county and the municipality without regard to whether the municipality has passed a sales tax with proceeds earmarked to construct, improve, repair or maintain any of the streets or roadways of such municipality.
C. The board of county commissioners may construct, improve, repair or maintain any of the streets of a municipality having a population of greater than five thousand (5,000) persons but less than fifteen thousand (15,000) persons if the municipality has passed a sales tax with the proceeds earmarked to construct, improve, repair or maintain any of the streets or roadways of such municipality.
D. The board of county commissioners may construct, improve, repair, or maintain any of the streets of a municipality if the county has a population in excess of five hundred thousand (500,000) persons according to the most recent Federal Decennial Census. The agreements entered into pursuant to the provisions of this subsection may be performed without regard to whether the municipality has passed a sales tax with proceeds earmarked to construct, improve, repair or maintain any of the streets or roadways of such municipality.

Title 69. Roads, Bridges, and Ferries

Chapter 1 - Oklahoma Highway Code of 1968
Article Article 3 - State Highway Administration
Section 316 - Certification of County Road Mileage

The Commission, on or before the first day of June of each year, shall certify to the Oklahoma Tax Commission the county road mileage of each county and the total county road mileage of the state as such mileage existed on the first day of January of such year. Such mileage shall be the computation of the existing road mileage for counties including any mileage represented by streets or roads in municipalities with a population of less than two thousand five hundred (2,500) and any other streets and roads in municipalities with a population of less than five thousand (5,000) that the county has agreed to construct, maintain, or repair. Any roads removed from the State Highway System by the Transportation Commission and returned to the county road system shall be added to the total county road mileage of the said county.

County Road Issues

Opening and closing roads:

Authority; Title 19 § 339 (A)(3) , Title 69 § 628
Process; Title 69 § 646 (By petition or by resolution the board of county commissioners)
Reserve; Title 69 § 1201 (limiting opening some section lines roads)
Best serves the most people; Title 69 § 601
One residence; 1978 AG 227
Standards; Title 69 § 601.1

Abandonment; (Pages 16-24) (Conditions)

Egress and Ingress to property; Title 69 § 1201

Boundary roads; Title 69 § 606, 621, 622, 623 (ODOT Director mediator)

Open section- cattle guards; (Pages 25-27)

Emergencies:

Homeowners Associations and disasters; Title 69 § 1910
Fire Fighting; Title 19 § 351
Purchasing; Title 19 § 1501 (A)(3)(q)

> "when the Governor declares an emergency in a county, the district attorney of that county shall have the authority to temporarily waive competitive bidding procedures for purchases that may expedite a response to the emergency situation."

Leasing equipment without contract for under 30 days; Title 69 § 636.3 (A)
Declared by a county official; limited to $5,000; Title 19 § 1505 (I)

Private Property:

Conservation work; Title 69 § 643.1 (Protection of road/bridge)
Creeks/streams; 2001 OK AG 41 (Protection of road/bridge)
School bus turnarounds; Title 69 § 601.5 (By agreement & Suggest letter from superintendent)
Disasters / Homeowners Association; Title 69 § 1910

Limits*:

Powers; Title 47 § 15-102

Speed limits:

- Authority, min speed 30mph, increments 10 mph; Title 47 § 11-803
- Countywide, max speed 65mph; Title 47 § 11-801(B)(3)(F) (55mph-do nothing; school 25mph)

Load limits:

- Authority, not allowed to permit trucks; Title 47 § 14-113
- Load amounts and exceptions; Title 47 § 14-109 (90,000 lbs)
- Defining issues; 2001 OK AG 41
- Bridges; 1982 OK AG 2 (penalties)

***File with Troop S of OHP in Oklahoma City**

County Road Issues, cont'd

Utilities:

Authority; Title 69 §1401
Issuing permits; 2012 OK AG 10 (allowed to charge to cover admin costs)
Telephone lines; 2013 OK AG 18, OK Constitution Article 9 Section 2, Title 18 § 603 (**NEW**)

Responsibility for Road/Bridge Damages; Title 47 § 14-114 (difficult proving)

Maintenance Responsibility at State Highway; Title 69 § 902 (ODOT maintains stop sign, drainage structure under county road; County maintains surface)

Maintenance Responsibility at a Turnpike; Title 69 § 1706 (Co. maintain bridge surface)

Reference

Oklahoma Statutes

Title 18. Corporations

Chapter 15 - Telegraph and Telephone Companies
Section 603 - Request of Information Regarding Telephone Line Installation

Any county may send out a one-time request for information regarding the future installation of lines, poles or wires to the owner of any telephone line operated in the public right-of-way of the county road system of the requesting county. Upon receipt of the request, the owner of the telephone line shall provide to that county notice of the date of installation, the name and contact number of the installation manager or supervisor, and the location of the lines, poles or wires.

ACCESS TO UNOPENED SECTION LINE RIGHTS-OF-WAY
BY
THE OKLAHOMA DEPARTMENT OF TRANSPORTATION

ROBERT E. GRANTHAM
STAFF ATTORNEY
OKLAHOMA DEPARTMENT OF TRANSPORTATION
MARCH 22, 2000

ACCESS TO UNOPENED STATUTORY SECTION LINE RIGHTS-OF-WAYS BY THE OKLAHOMA DEPARTMENT OF TRANSPORTATION

All discussions regarding Oklahoma Department of Transportation's access to statutory section line right-of-ways, which have never been opened, must, by necessity, include an analysis of whether the right-of-way has been abandoned. This latter point turns on the determination of which enabling act created the reservation of the right-of-way[1].

This initial two-fold analysis is required because the Courts have determined that certain statutory right-of-ways can be vacated or abandoned and other can not[2]. Further, this abandonment may occur with or without positive action on the part of the County Commissioners as will be shown herein.

It has long been the law in Oklahoma that even though a reservation for a statutory section line roadways exists, that this reservation may be vacated or abandoned[3] if two conditions exist:

1. First, the enabling act that created the statutory section line right-of-way must permit the vacation; and
2. Secondly, the Board of County Commissioners must take some action to vacate the statutory section line right-of-way.

As to the first issue, generally the Oklahoma Supreme Court has held that in those counties, which lie within the *Old Indian Territory,* the specific enabling acts do not permit vacation or abandonment for whatever reason. (See Exhibit A attached). However, in those counties lying within the *Old Oklahoma Territory,* the Organic Act of 1890, permits vacation if the Board of County Commissioners, sitting en banc, takes the necessary action to vacate or close the right-of-way.[4]

But, the Courts have long held that since the Organic Act of 1890[5], permits vacation, it

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1 *Denton v. Board of County Commissioners,* 873 P.2d 1039 (Ok 1994).

2 *Paschall Propel1ies, Inc. v. Board of County Commissioners,* 733 P.2d 878 (Ok 1987).

3 *Salyer, et al., v. Road Supervisors of Sickles Township,* 232 P. 412 (Ok 1924).

4 *White et al., v. Dowell et al.* 153 P. 1140 (Ok 1915)

5 *Organic Act of December 18, 1890.*

also permits abandonment.[6] This abandonment may occur even where the 'positive action' by the County Commissioners was not some physical or documentary act, but simply the act of failing to do anything within a reasonable period of time when the section line right-of-way is impassable. The Court essentially required that even though the right-of-way had not been opened within a reasonable period of time, something more was necessary. In *Salyer*[7] the Supreme Court permitted the abandonment of the statutory section line right-of-way not because of some act taken by the County Commissioners, but, because the Commissioners had taken no action to open the right-of-way within a reasonable period of time and the statutory section line right-of-way was, in fact, impassable.[8]

Therefore, if the enabling act permits a right-of-way to be vacated, the Court has held that under certain circumstances, it can also be abandoned (i.e., not opened within a reasonable period of time and impassable.). Perhaps the *Denton*[9] Court best stated this position when it held:

> "As is demonstrated by the foregoing authority, the initial step in analyzing an abandonment claim is to determine whether the section line at issue was reserved by the Organic Act or by some other enactment. If the section line is located in the former Oklahoma Territory and therefore reserved by the Organic Act, the case turns on whether the evidence satisfies the criteria for abandonment outlined in *White, Salyer* and *Wetsel,* and a jury deciding this issue must be so instructed. If, however, the section line is located in the former Indian Territory and thus reserved by some other enactment, the paramount issued is whether that enactment contains a provision for, or is otherwise construed to all, abandonment. Logically, it is only after this question is answered in the affirmative that consideration may be given to the abandonment criteria."[10]

The facts in the *White*[11] case were that the County Commissioners wanted to open the section line right-of-way for a public road. However, the land itself was impassable and the Commissioners entered into an agreement with the landowners that if the latter gave a deed to an alternate route, the Commissioners would vacate and close the section line right-of-way. The landowners agreed and the Commissioners did, in fact, enter their order vacating and closing the section line right-of-way. The sole issue before the Court was whether the Commissioners had the authority to vacate and close a right-of-way reserved in the Organic

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6 *Wetsel et al., v. Johnson et ux.* 468 P.2d 479

7 *Salyer, Supra*

8 *Salyer, Supra* at 414

9 *Denton, Supra*

10 *Denton, Supra* at 1042-1043.

11 *White, Supra*

Act. The *White*[12] Court held that the Organic Act of December 18, 1890, did authorize the Commissioners to vacate and/or close right-of-ways.

Then, the *Salyer*[13] Court was faced with the situation where the County Commissioners of Caddo County opened a section line for a public road, but, had to deviate around a gully. They condemned the necessary land for the deviation and constructed the road thereon. However, the Commissioners took no action as to the part of the section line right-of-way that was deemed impassible for road purposes. The Commissioners later attempted to take out this deviation and go back to the original section line right-of-way. The issues before the Court was whether the initial act of condemning and constructing a road away from the original section line was an abandonment of the section line right-of-way even though the Commissioners took no formal action to vacate the original right-of-way. The Court held that since the Commissioners had the authority of vacate under the Organic Act, it also had the authority to abandon. The Court further held that this abandonment occurred even though the Commissioners took no formal steps and the Court gave two reasons. First, the original right-of-way was impassible and secondly, they had condemned additional lands. The Court stated:

> "The reservation ... does not contemplate the performance of a futile and ineffectual act by the authorities of the state or any of its subdivisions, and where no highway has been actually established on a section line because of insuperable natural barriers to its use as such, an abandonment of the reserved use must be implied after the lapse of a reasonable time from the opening of the lands to settlement by the government, notwithstanding no affirmative act of vacation appears."[14]

Therefore, the two criteria used by the *Salyer* Court were 1) lapse of a reasonable period of time, and 2) the impassability of the original section line right-of-way.

> "Abandonment has the same effect as formal vacation, and, where the intention to abandon a reserved section line is evidence by its physical unsuitability for road purposes and by failure of the proper authorities to open the same to public use within a reasonable length of time, an intention to abandon is established so as to cause a reverter of the reserved portions to the abutting fee owners..."[15]

An addition holding of this Court must also be commented upon, is the Court's holding that the Commissioners could not act unilaterally, but, must act in concert at a regularly scheduled meeting, sitting en banc.

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12 *While, Supra*

13 *White, Supra*

14 *White, Supra*

15 *White, Supra*

The third case referred to by the *Denton*[16] Court is that of *Wetsel*[17]. The Court was faced with the situation where the original section line right-of-way was never opened, although on two occasions attempts were made but, abandoned in each case. The section line was impassible in a number of locations. The issue before the Court was whether the Commissioners could abandon the section line right-of-way without taking formal actions to vacate (predicated on the provisions in the Organic Act that permitted Commissioners to 'vacate' right-of-way) had been taken. The Court held:

> "Nonuser of the road involved existed for 25 years. The land had been under fence and cultivation. The long period of nonuser, and commissioners apparent disinterest over this period, coupled with evidence disclosing physical unsuitability of the land for road purposes, sufficiently established abandonment of the reserved section line by defendants and their predecessors in office."[18]

In conclusion, reserved unopened section line right-of-ways may be lost by abandonment if the following three conditions are met:

1. The lands lie within the *Old Oklahoma Territory;*
2. The lands are unsuitable for road purposes (impassible, etc.); and
3. A period of time deemed 'unreasonable' has occurred.

Further, these same unopened reserved section line right-of-ways may be lost through vacations and closure by formal action of the County Commissioners, sitting en banc, at a regularly scheduled meetings.

As to those lands lying within the *Old Indian Territory* the County Commissioners do not have the authority to vacate or close the section line right-of-ways, whether opened or unopened, and therefore, these right-of-ways can not be lost or abandoned, regardless of whether they are impassible, or an 'unreasonable' period of time has elapsed.

ROBERT E. GRANTHAM
STAFF ATTORNEY
OKLAHOMA DEPARTMENT OF TRANSPORTATION

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16 *Denton, Supra*

17 *Wetsel, Supra*

18 *Wetsel, Supra*

Status of Enabling Acts of Oklahoma
Regarding Abandonment of Section Line Right-Of-Ways

Indian Territory	Enabling Act	Abandonment	Oklahoma Case
Chickasaw	April 26, 1906	No	Paschall 733 P.2D 878 (1987)
Seminole	April 26, 1906	No	Paschall 733 P.2D 878 (1987)
Choctaw	April 26, 1906	No	Paschall 733 P.2D 878 (1987)
Cherokee	July 1, 1902	No	Paschall 733 P.2D 878 (1987)
Creek	June 30, 1902	No	Paschall 733 P.2D 878 (1987)
Osage	June 28, 1906	No	Mills 110 P.377 (1910)
Oklahoma Territory			
Organic Act	December 18, 1890	Maybe*	Denton 873 P.2D 42

* Abandonment depends on three (3) factors generally; 1) Unopened, 2) Impassable and 3) Non-use for 'unreasonable' period of time.

SELECTED CASE ANALYSIS AND SUMMARIES REGARDING
SECTION LINE RIGHT-OF-WAYS

1. *MJUS V. GLASSCOCK,* 110 P. 377 (OK 1910)

CASE HOLDS THAT THE 0SAGE ALLOITING ACT, DATED JUNE 28,1906, DOES NOT PERMIT VACATION OR ABANDONMENT OF UNOPENED SECTION LINE RIGHT-OF-WAYS.

2. *WHITE ET AL., V. DoWEU.ET AL.,* 153 P. 1140 (OK 1915)

CASE HOLDS THAT THE VARIOUS BOARDS OF COUNTY COMMISSIONERS HAVE THE AUTHORITY TO VACATE UNOPENED SECTION LINE RIGHT-OF-WAYS UNDER THE PROVISIONS OF THE ORGANIC ACT OF 1890 AS AMENDED. IT IS TO BE NOTED THAT THE LANDS IN THIS CASE ARE LOCATED IN THE 'OLD OKLAHOMA TERRITORY'. THE COURT DISTINGUISHED *MILLS V. GLASSCOCK* ON THAT BASIS.

3. *SALYER ET AL., V. ROAD SUPERVISORS' OF SICKLES TOWNSHIP,* 232 P. 412 (OK 1924)

CASE HOLDS THAT BOARD OF COUNTY COMMISSIONERS MAY LOSE THE RIGHT TO THE RESERVED SECTION LINE RIGHT-OF-WAY BY NON-USE AFTER A REASONABLE PERIOD OF TIME HAS ELAPSED, ESPECIALLY IF THE LANDS ARE IMPASSABLE.

ADDITONALLY, THE COURT HELD THAT THE BOARD OF COUNTY COMMISSIONERS MUST ACT AS A BOARD SITI'ING EN BANC, RATHER THAN THROUGH ONE OF ITS MEMBERS, TO TAKE THE APPROPRIATE ACTION TO OPEN A RESERVED SECTION LINE RIGHT-OF-WAY.

IT IS NOTED THAT THE LANDS INVOLVED IN THIS SUIT ARE LOCATED IN CADDO COUNTY, WITHIN THE 'OLD OKLAHOMA TERRITORY', ALTHOUGH THE COURT MAY NO MENTION OF IT.

4. *STATE EX REL KING V. MCCURDY,* 43 P.2D 124 (OK 1935)

CASE IS IMPORTANT FOR TWO REASONS, FIRST IS THAT THE COURT HELD THAT THE RIGHT-OF-WAY ESTABLISHED COULD NOT BE DIMINISHED BY NON-USE, THAT IS TO SAY, THAT IF THE RIGHT- OF-WAY IS 100 FEET WIDE AND THE ROAD WAS ESTABLISHED IN THE CENTER *50* FEET, THE OUTSIDE 25 FEET ON EITHER SIDE ARE NOT ABANDONED FOR NON-USE, BUT SIMPLY RESERVED FOR FUTURE USE. SECONDLY, THE COURT HELD THAT ESTOPPEL DOES NOT AND CANNOT WORK AGAINST THE STATE.

5. *TOWN OF CHOTEAU ET AL., V. BLANKENSHIP,* 152 P.2D 379 (OK 1944)

PRIVATE INDIVIDUAL ATTEMPTED TO HAVE A PLATTED, BUT UNOPENED, STREET DECLARED ABANDONED FOR NON-USE. THE COURT HELD THAT SINCE PLATTED STREETS ARE HELD IN TRUST BY THE MUNICIPALITIES, THEY DID NOT OWN THEM, THEREFORE, IF THEY DO NOT OWN THEM, THEY CAN NOT ABANDON THEM. COURT ALSO HELD THAT YOU COULD NOT ACQUIRE THE PLAITED, BUT UNOPENED, STREET BY ADVERSE POSSESSION.

6. *STOCKTON V. BOARD OF COUNTY COMMISSIONERS OF PAYNE COUNTY,* 363 P.2D 504 (OK 1961)

COUN'tY COMMISSIONERS OPENED A SECTION LINE ROAD BUT DEVIATED FR.OM THE SECTION LINE FOR APPROXIMATELY 690 FEET. YEARS LATER THE COMMISSIONERS CAME BACK IN AND STRAIGHTENED OUT THE BOW. STOCKTON CLAIMS THE ORIGINAL SECTION LINE BY ADVERSE POSSESSION AND THE COMMISSIONERS SUBSEQUENT TAKING AS INVERSE CONDEMNATION. COURT HELD THAT THE ORIGINAL CONSTRUCTION OF THE BOW INDICATED AN INTENT TO ABANDON THE ORIGINAL SECTION LINE.

PAYNE COUNTY LIES WITHIN THE OLD OKLAHOMA TERRITORY AND THEREFORE IS CONTROLLED BY THE ORGANIC ACT OF1890.

7. *WETSEL, ET AL , V. JOHNSON, ET UX.,* 468 P.2D 479 (OK 1970)

COURT HELD THAT ABANDONMENT HAS THE SAME EFFECT AS FORMAL VACATION, AND, WHERE THE INTENTION TO ABANDON A RESERVED SECTION LINE IS 1) EVIDENCED BY ITS PHYSICAL UNSUITIBILITY FOR ROAD PURPOSES AND, 2) BY FAILURE OF THE BOARD OF COUNTY COMMISSIONERS TO OPEN SAME TO PUBLIC WITHIN A REASONABLE PERIOD OF TIME, AN INTENTION TO ABANDON IS ESTABLISHED.

NOTE THAT THE LANDS INVOLVED HEREIN ARE LOCATED IN GREER COUNTY, PART OF THE ORIGINAL 'OLD OKLAHOMA TERRITORY'.

8. *FRANKS ET UX., V. TYLER,* 531 P.2D 1067 (OK APP DIV I 1974)(0VERRULED)

THE COURT HELD THAT THE RESERVED SECTION LINE RIGHT-OF-WAY WAS SIMPLY THAT, RESERVED. IF IT TO BE OPENED, IT MUST BE DONE SO BY THE BOARD OF COUNTY COMMISSIONERS TAKING WHATEVER LEGAL ACTION IS REQUIRED BY THE LEGISLATURE (I.E., VOTE, RESOLUTION, ETC.) AND IF NOT OPENED WITHIN A REASONABLE PERIOD OF TIME, THEN IT IS ABANDONED.

THE LANDS INVOLVED WITHIN THIS CASE ARE LOCATED IN THE OSAGE LANDS, PART OF THE ORIGINAL 'OLD INDIAN TERRITORY' AND AS SUCH ARE NOT SUBJECT TO ABANDONMENT (SEE *CHILDRESS* BELOW)

9. *CHILDRESS V. JORDAN, ET AL ,* 620 P.2D 470 (OK APP DIV 1 1980)

THE COURT IN THIS CASE REVISED ITS HOLDING IN *CHILDRESS* ABOVE AND OVERRULED THAT CASE BY HOLDING THAT THE RESERVED SECTION LINE RIGHT-OF-WAYS LOCATED ON OLD OSAGE LANDS (I.E., OLD INDIANTERRITORY LANDS) ARE NOT SUBJECT TO ABANDONMENT AND THEREFORE, THE BOARD OF COUNTY COMMISSIONERS COULD OPEN THESE RESERVED RIGHT-OF- WAYS WHENEVER IT CHOSE.

10. *PASCHALL PROPERTIES V. BOARD OF COUNTY COMMISSIONERS ,* 733 P.2D 878 (OK 1987)

THIS CASE HOLDS THAT RIGIIT-OF-WAYS RESERVED IN THE CHEROKEE ENABLING ACT CAN NOT BE VACATED, CLOSED OR ABANDONED AS THE ACT DOES NOT PROVIDE FOR SAME.

11. *DENTON ET UX., V. BOARD OF COUNTY COMMISSIONERS OF McCLAIN COUNTY,* 873 P.2D 1039 (OK 1994)

COURT HELD THAT RESERVED SECTION LINE RIGIIT-OF-WAYS LOCATED ON LANDS THAT WERE A PART OF THE OLD CHICKASAW NATION, ARE NOT SUBJECT TO ABANDONMENT OR VACATION.

THIS CASE IS PROBABLY THE BEST CASE TO READ AND THE LEADING CASE FOR AN ANALYSIS OF THE TWO-FOLD PROCESS TO DETERMINE WHETHER AN UNOPENED RESERVED SECTION LINE RIGIIT-OF-WAY CAN BE ABANDONED. ADDITIONALLY, IT HAS AN EXCELLENT ANALYSIS OF THE VARIOUS ENABLING ACTS VIS A VIS THE ORGANIC ACT.

12. *BURKHART ET UX., V. JACOB ET AL 916* P.2D 1046 (OK 1999)

ALTHOUGH THIS CASE REALLY DOES NOT INVOLVE THE ABANDONMENT OF A RESERVED SECTION LINE RIGHT-OF-WAY, IT DOES HAVE SOME INTERESTING LANGUAGE AS FOLLOWS:

"WHILE THE SECTION LINE IS SUBJECT TO THE RESERVATION CREATED IN THE ACT, ACTION BY THE BOARD OF COUNTY COMMISSIONERS IS REQUIRED TO OPEN THE ROAD FOR PUBLIC USE. THE BOARDS OF COUNTY COMMISSIONERS OF VARIOUS COUNTIES HAVE 'EXCLUSIVE' JURISDICTION OVER THE DESIGNATION, CONSTRUCTION, MAINTENANCE AND REPAIR OF ALL OF THE COUNTY HIGHWAYS AND BRIDGES • • •FURTHERMORE, THE LANGUAGE OF SECTION 1201 OF TITLE 69 IS CONCLUSIVE THAT A SECTION LINE CANNOT BECOME A PUBLIC HIGHWAY WITHOUT AFFIRMATIVE ACTION BY THE APPROPRIATE BOARD OF COUNTY COMMISSIONERS • • •THE ACT OF APRIL 26,1906 IS A RESERVATION OF THE RIGHT TO OPEN THE ROAD FOR PUBLIC USE. IT DOES NOT AUTOMATICALLY CREATE A PUBLIC ROAD."

THE LANDS INVOLVED IN THIS SUIT WERE PART OF THE ORIGINAL CHICKASAW NATION LANDS, WHICH WERE LOCATED IN THE OLD INDIAN TERRITORY.

STATE OF OKLAHOMA
OFFICE OF THE DISTRICT ATTORNEY

LARRY D. STUART, DISTRICT ATTORNEY
DISTRICT 10
PAWNEE – OSAGE COUNTIES

April 7, 1993

Board of County Commissioners
Osage County
Pawhuska, OK

You have requested an opinion of the office to answer the following questions:

1. May cattleguards be installed across county roads by the County or at the request of an adjacent landowner by (a) the county at its own expense, (b) by the county at the landowners expense, (c) by the landowner at his own expense?

2. May the county repair or replace existing cattleguards now present across county roads?

There appears to be no clear, concise answer to these questions supported by Statute or case law, therefore, this opinion can only be advisory dependant upon all the facts and circumstance relating to each individual request or instance.

Clearly, the Board of County Commissioners has the statutory duty to "construct and maintain as county highways those roads which best serve the most people of the County." The Board may use any funds which are in the county highway fund for that purpose. When the Board takes any action regarding county roads, it must be prepared to defend its position that such action "best serves the most people of the county."

The next factor to consider is the type and nature of the road easement, which the county claims. Placement of a cattleguard across a road constitutes evidence, just as a gate does, that ownership of the road is claimed by the adjacent landowner, and the public's use of the road is by permission only. Due to the many, many roads claimed by the county by adverse possession or prescription, consideration of the type of easement held by the County is very important. Placement of a cattleguard across a county road might be considered an acknowledgment by the County that the public use of a road is permissive and that the road is not a county road.

Another factor to consider is the purpose of a cattleguard. Normally, a cattleguard is wanted to allow the adjacent landowner to avoid fencing his property to keep his livestock on his property and off of his neighbor's land. Title 4 O.S. §98

requires an owner to restrain his animals from running at large. “Running at large” includes running on public road right-of-ways. Allowing the placement of a cattleguard which allows a landowner/animal owner to avoid fencing his property where animals are kept involves the Board in the violation of the law.

Probably one of the most important factors in reaching your decision, is the possible liability imposed on the County. A cattleguard constitutes an obstruction of the county road. Any placement of any obstruction not necessary to the road itself creates liability upon the County, particularly placement of the character of a cattleguard where none existed before. Proper, safe construction and installation becomes extremely critical and the duty to warn motorists of the new placement also becomes extremely important. Failure in either of these areas could subject the County to severe liability.

Pre-existing cattleguards are a different matter. It is probably safe to assume that most pre-existing cattleguards were present when the county acquired the road right-of-way. The county acquired the road, as it then existed – cattleguards and no fences. Under those circumstances the county has the duty of maintaining the status quo or of making improvements to the situation such as constructing fences and providing a cattle pass through which would allow removal of the cattleguards. Preferably the County should construct fences and a cattle pass through and remove the cattleguards. Recognizing the financial difficulty in doing this, the County should maintain the Status quo (keep in good repair) or improve the safety of the cattleguards.

In summary, it is the advice of this office as follows:

1. The County should <u>not</u> install or allow the installation of cattleguards across county roads where none existed before for the following reasons:

   (a) Any expense borne by the County would not best serve the most people of the County.

   (b) Placement of the cattleguard across a county possession or prescription would serve to defeat the County’s claim to said road.

   (c) Placement of a cattleguard across a county road serves to assist in violating Title 4 O.S. §98.

   (d) Placement of a cattleguard creates liability to the County.

2. The County should repair or replace pre-existing cattleguards when the same are unsafe or become unsafe, to avoid possible liability for allowing an unsafe condition to exist. Preferably, the road should be fenced out and the cattleguard should be removed.

Respectfully Submitted,

LARRY D. STUART
DISTRICT ATTORNEY

County Highway Fund

Definition; Title 69 § 1503
Best serves the most; Title 69 § 601
One residence (new road): Oldfield v. Donelson (OK Supreme Court 1977 OK 104)
Division of funds; 1995 AG 95

Statutory Tax Revenue Sources
Gasoline/CNG; Title 68 § 500.6
Diesel; Title 68 § 500.7
Motor Vehicle Collections; Title 47 § 1104
Gross Production; Title 68 § 1004
Special Fuel: Title 68 § 704

Election Year

Election years are always challenging but also effects they way you do business. Every situation will be different in every county. Please discuss your situation with your DA now and have them give their legal opinion on how you should operate. Below are my opinions.

1. Board of County Commissioners must surplus equipment before March 14, 2016 (30 days before beginning of filing period) or may surplus if following situation(s) occur below.

- **No opponent**
- **Wins reelection, can succeed himself at primary or general**

This seems to effect the entire board when one commissioner still does not know if he will succeed himself. (Randy's opinion) Anything surplused from any office at the county will be affected. Now, the auditors' office might say it is ok if two of the three commissioners do not have an election and will be back in office. They can take board action. If so, ask the auditors' to provide that to you in writing.

Example: Longest scenario from being able to surplus, existing commissioner retiring, then from March 9, 2016 to January 4, 2017 the Board of County Commissioner can not surplus any item from any office.

Title 19. Counties and County Officers

Section 421.2 - Transfer of Surplus Machinery, Equipment, or Vehicles

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A unanimous vote of the board of county commissioners may transfer any machinery, equipment or vehicle belonging to the county, which is deemed by the board to be

surplus, to a political subdivision of the state which is in need of such machinery, equipment or vehicle. Upon such transfer, the subject property shall be removed from the inventory of the county. Except as otherwise provided in this section, the board of county commissioners may not deem any property to be surplus during the period of time beginning thirty (30) days before the filing period for any election of a county commissioner and ending the day after a county commissioner is sworn in as such. If the incumbent draws no opponent or if the incumbent county commissioner wins reelection, either at the primary, special, or general election, the prohibition of declaring county property or material surplus until the swearing in of county officials shall be removed and the county may dispose of surplus property as provided in this section. When the political subdivision receiving such property declares same to be surplus, the governing body shall give written notice to the county of its intent to transfer such property back to the county. The board of county commissioners shall have up to fifteen (15) days from the date of receipt of such notice to either accept or reject the property. The political subdivision shall transfer such property back to the county only if the board of county commissioners agrees to accept the property or the board fails to respond within the fifteen-day time period.

2. County Commissioner cannot buy or dispose of equipment.

- **Not filing - Starts at end of filing period – April 15, 2016**
- **Defeated at Primary Election – June 28, 2016**
- **Defeated at General Election – November 8, 2016**

This occurs when a commissioner does not file or is defeated. That commissioner cannot acquire, contract, or dispose. The other commissioner(s) can conduct normal business.

Example: Longest scenario from being able to dispose or buy equipment, existing commissioner retiring, then from April 13, 2016 to January 4, 2017 the retiring commissioner can not dispose or buy equipment.

Title 19. Counties and County Officers

Section 333 - Record of Orders and Decisions - Commissioner not Succeeding Himself - Duties

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A. The board of county commissioners shall keep a book in which all orders and decisions made by them shall be recorded, except those relating solely to roads and bridges as required by Section 334 of this title. All orders for the allowance of money from the county treasury shall state on what account and to whom the allowance is made, dating the same and numbering them consecutively from the first day of January to the thirty-first day of December, inclusive, in each year.

B. Any county commissioner who fails to file for reelection or is defeated in any primary or general election or by any other manner it is impossible for the commissioner to serve another term in office, shall not acquire, purchase, contract for or dispose of any machinery or equipment, or expend or approve for expenditure any monies for any purpose other than normal or routine operating expenditures except as provided in this

section. It shall be the mandatory duty of the commissioner to execute payment and to pay all outstanding obligations of the county incurred by the commissioner, or on behalf of the commissioner by the board of county commissioners, prior to the expiration of the term of office of the commissioner. However, in the case of lease-purchase contracts, rental, lease or other payments extending beyond the term of office of the commissioner it shall be the mandatory duty of the commissioner to execute and to make such payments current as of the date of expiration of the term of office of the commissioner. The commissioner shall be liable both personally and on the official bond of the commissioner for any violation of the mandatory duties herein imposed.

3. Spending funds, Board of County Commissioners statutory duty

Beginning July 1 of an election year, a county officer running for office cannot spend more than ½ of balance on hand by December 31st without written approval from the county excise board.

- **Only is in effect if the County officer loses their election. If there is a runoff election or general election, both being after July 1st, the officer must be prepared to leave ½ of their balances in their accounts. The reason is they will not know if they will win.**

Example: County officer has a July 1st balance in their account of $500,000. On December 31st, the officer must have a minimum balance of $250,000.

Title 19. Counties and County Officers
Section 347 - Limit of Annual Expenditure or Indebtedness - Warrants

C. Whenever a county officer holding an elective office will not immediately serve a succeeding term in the same office, it shall be unlawful for the board of county commissioners, during the first six (6) months of the fiscal year in which said term of office expires, to approve claims for the operation of said office totaling in excess of one-half (1/2) the amount allocated for the operation of said office during said fiscal year, unless approval in writing is obtained from the county excise board, and any claim in excess thereof and any warrant issued pursuant thereto shall be null and void.