

County Road Laws Of Kansas

A Guide for County Engineers, Road Supervisors and
Land Surveyors in Understanding County Road
Records.

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If you find any errors in this guide, or have additional information that should be included in future issues please contact me.

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Disclaimer

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Section 1 - Introduction

Those of us who have made a career in county road work have many occasions to examine the original road records which may date back to before Kansas was a state. The county roads in rural areas, except for a few that have been widened, sit at the original location and are based on the original road opening records. Too often we find that the records are illegible, faded, incomplete, confusing, or maybe even missing. Perhaps the condition of the records should be expected. More than 100 years have elapsed since most county roads were opened in Kansas. This means that there have been many opportunities for the records to have been lost or misfiled. Maybe the original records were incomplete. The viewers, county clerk, county surveyor, and county commissioners may not have understood that we would be looking at their records 100 years later, or they may have been more complete. To add confusion to this issue, most road records were not recorded at the Register of Deeds like most other land records. So many times title people just except road records from their title insurance and leave the owner to wonder about the status of the road. Many counties are adding to this issue by not recording condemnations at the Register of Deeds office. This document's intent is to address common issues that arise when dealing with county road records. The outcome or decision is based on the specific facts at that location, and all that is stated in this guide is to give you general guidance on how to proceed.

Warning to Surveyors: This document was developed for both county officials and private surveyors. Private surveyors need to be aware that the road right-of-way records and locations are somewhat different than private boundary lines. There have been special laws enacted to protect the public's interests and that recognize the difficulty in watching over the boundaries of a large road system. For instance, adverse possession cannot be operative toward the county, but can be from the county toward private property owners. It is unlikely that any county will move a road or fence because a private surveyor thinks it is in the "wrong" place. Additionally, it is unlikely the county will accept your survey if you stake a right-of-way line that falls in the road or ditch rather than the location of the current apparent right-of-way line. Cautionary notes should be included on your plat if the apparent right-of-way line does not match the right-of-way line you stake.

Suggestion to County Engineers/Road Supervisors: In using this guide I would advise you to look through the session laws and see what year the section lines in your county were declared public roads and what width the legislature specified. The openings were sometimes followed a few years later repealing the section line road law. This gave the county that many years to open section lines with what you might call the short version of the road opening law. It is helpful to know those dates and the minimum width as you do the individual research on a particular road.

Section 2 – Common Problems with Road Records

There are a number of common issues that arise when dealing with county roads and county road records.

- Road open, but no road width is stated.
- Road opening has a stated width, but fences and apparent right-of-way lines are wider.
- Road opening has a stated width, but fences and apparent right-of-way lines are narrower.
- No road opening records found, but the road has been maintained by the county.
- Road opening found, but the road is not now open to public travel.
- Road opening found, but the road was apparently never open to public travel.
- Road is in the wrong location (not same location as stated in records).
- Road is deeded to the county but the county has not maintained the road.

Each issue will be discussed in more detail below. Remember, these are just general answers, and each situation has to be determined on a case by case basis based on the available information and custom in your county.

Road open, but no road width is stated: This is probably the most common situation. It is a good idea to go to the site and measure the apparent right-of-way width. Based on the date of the road opening you can check for the minimum right-of-way width allowed by state law at that date. If this is a section line road, be sure to check the session laws for your county to see what width the legislature set for the section line roads. Generally the width would be the **minimum** road width according to the statute that was in effect at the time that the road was opened. This is supported by the decision from *Willis vs. Sproule, 13 Kan., Page 194*, which held: “where viewers neglected to report upon the width of the road, as required by Section 31 of the road law (Chapter 89, General Statutes of 1868) and the road was afterward established; held, that under Section 31 the road **will be forty feet wide.**” (July Term 1874).

Road opening has a stated width, but fences and apparent right-of-way lines are wider: Now if there are just a couple of feet of difference, this is not a big deal, some farmer may have set his fence back in the past. But if this is more than a couple of feet on each side of the road, the fences may have been moved back for a reason. First check the Register of Deeds Office for a recorded document such as a right-of-way deed or easement. In the 1950’s and 1960’s some counties got the land owners to donate right-of-way for a blacktop road, and these donations might not have been recorded at the register of deeds. If the road has obviously been widened from the original, the issue is lack of documentation, not where the right-of-way line is located. A private surveyor may want to show the apparent right-of-way line as well as the original right-of-way line on his plat.

Road opening has a stated width, but fences and apparent right-of-way lines are narrower. There have been a number of court cases that the county did not have to take all the right-of-way at the time the road was opened, and that they can come back at a

later date and use the right-of-way that was originally dedicated. Supporting this is *WEB VS. THE BOARD OF COUNTY COMMISSIONERS OF BUTLER COUNTY, ET AL*, 52 KAN., PAGE 375 (JULY TERM 1893). Also, a private land owner cannot obtain title to a public highway by adverse possession, see: *EBLE VS. THE STATE OF KANSAS, EX REL*, 77 KAN. PAGE 179 (JANUARY TERM, 1908).

No road opening records found, but the road has been maintained by the county.

Usually it is fairly obvious that it is a public road and that the records were lost. A good example would be a section line road that looks like all the other roads. Another example would be a through road that is used by the general public. A situation where no official road records are found usually calls for some research in other areas to get an idea of when the road might have been opened. It is nice to have an estimated opening date to determine a right-of-way width. Without an opening date it is likely the width is the state minimum of 40 ft. You might check old county maps, aerial photos, or atlas books to see when the road might have been opened. Let's say you, as a county official, doubt that a particular "road" is a public road because it just serves one house, is not on the section line, and it is not as wide as a normal county road. If you have any detailed maintenance records, or there are some old timers that may have retired from the county, they might remember if the county had been maintaining the road. For instance, is there a chance this road was maintained by mistake, say it is just a long driveway to a farm. The point is that if the county has been maintaining the road for a long time, you need a good reason to now say that it is not a county road. There are a number of Supreme Court cases later in this guide that talk about the conditions for establishing a road without official records.

Road opening found, but the road is not now open to public travel. In this situation we have two major divisions, one would be in a platted rural subdivision, and the other would be a more traditional county road. The platted subdivision is normally approved by the county, and dedications accepted. In *KIEHL VS. JAMISON, 79 KAN., PAGE 788 (JANUARY TERM, 1909)*, the court ruled that on a duly platted street "Neither the failure of the county authorities formally to open up and work the streets in such an addition nor the fact that such streets have not been used by the public will make them in law closed or unopened streets." So it seems on a platted street, that it is generally a public street even though it is not now open to public travel.

On a traditional county road opening when the road was evidently traveled at one time, but had become untravelled, generally the right-of-way is still in place. *EBLE VS. THE STATE OF KANSAS, EX REL, 77 KAN., PAGE 179 (JANUARY TERM, 1908)*: "(3) The statute vacating roads and barring authority for opening roads which have remained unopened for seven years after orders have been made or authority has been granted for opening them does not apply to a discontinuance of use after a road has been opened." "(4) A private individual cannot obtain title to a public highway by **adverse possession**. Lapse of time will not bar the remedies of the state against encroachment upon a highway. An obstruction to the public use of a highway is a continuing nuisance, and no equities in favor of a person committing such a nuisance can be founded upon the

acquiescence of the highway or other officials or upon their latches in taking steps to punish or abate it.”

It seems in most cases when the road opening is found, but the road is not now open to public travel, the right-of-way is still in place. The question most often asked is: Who is responsible for opening the road? If it is a township road that has not been traveled for 20 years the statutes provide that the person requesting the road be opened is responsible to bring the road up to township standards, see KSA 68-115. There is no comparable statute for county unit counties. Some counties have passed resolutions providing that any unopened road must be constructed to a county standard at the expense of the person wanting the road open. Other counties just consider the merit of the request and whether the use would be by just one individual or be of general benefit to the area, and whether the cost of opening the road would be offset by the benefits to the public.

Road opening found, but the road was apparently never open to public travel. In 1879 the legislature adopted a law known as the “Non-User” statute that provided: “That any county road or part thereof, which has heretofore or may hereafter be authorized, which shall remain **unopened** for public use for a space of seven (7) years at any one time after the order made or the authority granted for opening the same, shall be and the same is hereby vacated, and the authority granted for erecting the same is barred by the lapse of time.” In a number of court cases the Supreme Court ruled that the 7 year period started immediately after the authorization to open the road and where the road had never been opened or used. So in those counties that the section lines were declared roads, that authorization expired 7 years later. For roads opened individually by the counties, if the road was not physically opened within 7 years, it was hereby vacated. The courts also ruled that this statute did not apply to roads that had been physically opened and fell into disuse and were no longer traveled. For support see *TOPEKA VS. RUSSAM, 30 KAN., PAGE 550 (JULY TERM, 1883)* and *WEB VS. THE BOARD OF COUNTY COMMISSIONERS OF BUTLER COUNTY, ET AL, 52 KAN., PAGE 375 (JULY TERM 1893)*. In summary, if the road was opened and never traveled on it was vacated by the Non-User statute.

Road is in the wrong location (not same location as stated in records). Sometimes we find that the road is not in the “exact” location as shown on the road records. This may be because surveying is becoming more accurate, monument locations may have been reset differently, and on rare occasions the road may have shifted due to terrain. It is difficult to shift a road as that involves moving bridges, culverts, and sometimes fences on both sides of the road. For that reason alone, it is likely that the road has not shifted or moved, and in fact is in the location as originally laid out, and the road records are in error. This was illustrated in *SHAFFER VS WEECH, 34 KAN. PAGE 595*, where the township board wanted to move a road to the location stated in the county surveyors report of the road opening. The court ruled that when the real facts as to where a road was actually surveyed and located are shown by other and better evidence, the map and field-notes can no longer control.

Road is deeded to the county, but the county has not maintained the road. On occasion a developer or land owner will deed a private road, or a road to a development, to the county under the belief that the county will then be required to maintain the road. For a dedicated public road there does have to be a dedication, but there also needs to be an acceptance of the road by the county. The acceptance might be an implied acceptance such as maintaining the road, or a formal acceptance by the county commission. There is a good discussion on dedication and acceptance in *CARLSON VS. STEHLIK, KANSAS SUPREME COURT CASE NO. 84,653 IN 2001*. If the County Commission would like to start maintaining a private road they have an option to do that in KSA 68-124.

Section 3 - Road Records Research

To research county road records, you have to become familiar with the specific procedure used in each county for opening a road, and where the records are currently stored. Although each county had to follow state law, the procedures could be slightly different based on how the county was doing business, and the capabilities of the various officials. Records are normally filed based on the date the petition was received, and hopefully, someone at the county is maintaining a geographical index of the openings and vacations. The three most obvious locations to search are the County Engineer/Road Supervisor Office, the County Clerk, and the Register of Deeds. You will be looking for Road Packets, Commissioner's Road Journals, Commission Minutes, and County Surveyor's Books. Generally the road packet contains all the original loose leaf material. The Commissioners Road Journal has the transcribed proceedings in bound form. The Commission Minutes have the final order of the County Commission. Sometimes the County Surveyor kept a separate book of road opening surveys, but this is not uniform in all counties. The completeness of the records was dependent on the particular office holder responsible at the time the road was opened, so details can vary widely.

Kansas Statutes Annotated (K.S.A.) 19-310 states: "It shall be the duty of the County Clerk to record in a proper book, to be called the "road record", a record of all proceedings in regards to the laying out and establishing roads in the county, which record shall include the report of the commissioners and surveyor locating such roads, and maps thereof; and such records, or certified copies thereof, are hereby declared prima facie evidence of the statements therein contained, in the courts of this state."

The County Clerk keeps the journals of the minutes of the County Commissioners' meetings. Kansas statues set out the procedure for opening, relocating, and vacating roads. This procedure includes the petition, bond, appointment of viewers, publication, road view, survey, damages allowed, the recommended width of the road, and the final action of the Board of County Commissioners. This information is recorded in the official "road record" book and the original papers can sometimes be found in packet form in the county archives. All official action taken on road petitions is also recorded in the Commissioner's Road Journals, and is usually referred to by the principle petitioner's name.

When you are checking road records for location and width, it is a good idea to get a copy of the "*Return of the County Surveyor*", the "*Report of View of Road*", and the "*Order of the Board of County Commissioners*".

The "*Return of County Surveyor*" will have the field notes and plat of the road survey. It would have a point of beginning, all intermediate calls for angles, distances, monuments, the ending point, and a reference as to whether or not the road is on the section line. In some cases, the monuments found or set by the county surveyor on the road survey might be the last record of monuments found or set in the section that you are surveying. This report might also give a **recommended** road width. The county surveyor may have set "road stones" to mark angle points or ends of surveyed miles, and these may or may not

correlate to the section corners. Sometimes there is a drawing in the packet as well as a drawing and description in the road journal, these drawings should match, but sometimes don't.

The "*Report of Road View*" should reveal any deviation from the original petition and the report of the county surveyor. It is not unusual to find that the viewers favored moving the center of the road away from the surveyed centerline to avoid damages to existing fences, hedges, or buildings. This report might also give a **recommended** road width.

The "*Order of the Board of County Commissioners*" is the final acceptance or rejection of the road, and probably the most important document, as it would adopt, revise, or reject the other two reports. If no width is recorded in the final order, it is understood that the recommended width from the county surveyor or the viewers was accepted.

It is not unusual to find roads with no widths recorded in the Road Records or the Commissioner's Road Journals. Some counties have resolutions that state that any road in the county with the width not specified shall not be less than forty (40) feet. There are also counties where all of the section lines were declared public highways with a specified width by an act of the state legislature as long as certain provisions were followed. **You will need to find out what the practices are for the county in which you are working.**

I have researched my county law library on the statutes and case laws on county road widths. My County Counselor has advised me, that when a road width is **not** recorded in the Commissioner's Road Journal or set by the county surveyor or the viewers, and the county does not have a resolution on file giving a minimum road width, that the width would be the **minimum** road width according to the statute that was in effect at the time that the road was opened. This is supported by the decision from *Willis vs. Sproule, 13 Kan., Page 194*, which held: "where viewers neglected to report upon the width of the road, as required by Section 31 of the road law (Chapter 89, General Statutes of 1868) and the road was afterward established; held, that under Section 31 the road **will be forty feet wide.**" (July Term 1874).

Another possibility is that you may find instances when a road was opened twice! I have found several instances of this in Lyon County. One road had the west 1,320 feet opened at 60 feet in 1879, and then in 1887 the entire mile was opened at 40 feet! My County Counselor is of the opinion that since the west 1,320 feet was never vacated prior to 1887, that the west 1,320 feet remains as a 60 foot right-of-way, and the remainder of the mile is a 40 foot right-of-way. I have even found one instance where the Board of County Commissioners *vacated* the same road twice! The moral is to not stop at the first entry that you find in the Road Records, but to look through all of the entries.

Section 4 - STATUTES AND SESSION LAWS:

The following laws of the state and territory of Kansas are a chronological summary of the information that I have compiled through years of research. Bear in mind that a **land surveyor** compiled this information, and not a lawyer! **You can use it as a tool to aid in your research, but it should not be considered to be a final statement.** The Lyon County law library did not have all of the session law books and statute books, so I am sure that I have missed some information. You should treat this information as part of your basic research **only** and not the final word on road widths until you have researched the records in the specific county where you will be surveying.

1) GENERAL LAWS OF THE TERRITORY OF KANSAS 1855-1856:

CHAPTER 30: COUNTIES [PAGES 205 TO 211]: This Chapter defines the boundaries of the following counties: Johnson, Lykins, Linn, Bourbon, McGee, Douglas, Franklin, Anderson, Allen, Dorn, Shawnee, Weller, Coffey, Woodson, Wilson, Richardson, Breckenridge, Madison, Greenwood, Godfrey, Davis, Wise, Butler, Hunter, Doniphan, Atchison, Leavenworth, Browne, Jefferson, Nemaha, Calhoun, Marshall, and Riley.

CHAPTER 139: ROADS AND HIGHWAYS [PAGES 681 TO 691]:

Section 1: “All county roads shall be opened and repaired according to the provisions of this act.”

Section 2: “The tribunal transacting county business shall have power to make and enforce all orders necessary, as well for establishing and opening new roads, as to change or vacate any public road, or any part thereof, in their respective counties.”

Section 3: “All county roads shall be cut out **not less than twenty feet nor more than forty feet wide**, to be determined, from time to time, by the tribunal transacting county business ordering the opening of the same, according to the supposed utility of such road.”

CHAPTER 140: ROADS TO BE PUBLIC HIGHWAYS [PAGES 691 TO 693]

Section 1: “That all territorial roads to be hereafter located and established, or which may have been located within this territory, shall be viewed, surveyed and established, and returns made thereof, agreeable to the provisions of this act, within one year from the passage of the act by which said road or roads may be granted or authorized to be laid out respectively.”

Section 2: “The commissioners appointed to locate and establish any territorial road shall cause the same to be correctly surveyed and marked, from the beginning throughout the whole distance, by setting stakes in the prairie, at three hundred yards distance, and blazing trees in the timber; they shall establish mile posts, which shall be marked with a marking iron in regular progression from the beginning to the termination of said road, and shall also establish a post at every angle in said road, marking, as aforesaid, upon the same and upon a tree in the vicinity, if any there be, the bearing from

the true meridian of the course, beginning at said angle post set, as herein directed, and note the bearing and distance of two trees in opposite directions, if there be any in the vicinity, from each angle and mile post.”

Section 3: “The commissioners and surveyor of each road shall make a certified return of the survey and plat of the whole length of said road, specifying in said return the width, depth and course of all streams, the position of all swamps and marshes, and the face of the country generally, noting where timber and where prairie, and the distance said road shall have been located in each county.”

Section 4: “Said return and plat shall be signed by a majority of the commissioners and the surveyor of said road, and forwarded to the secretary of the territory within sixty days after the review and survey of the same, to be by him recorded and preserved; they shall also, within sixty days, as aforesaid, deposit in the office of the clerk of the board of county commissioners of each county through which said road shall be laid, a return and plat, as aforesaid, of so much of the road as shall be laid out and established in said county, to be therefore recorded as aforesaid.”

Section 5: “The said commissioners shall, after the completion of the survey of any road as aforesaid, make out a certified account of all services rendered as well by the surveyor and other hands as by themselves, charging to each county through which said road may have been laid a proportion of the expenses, agreeably to the number of days employed thereon, and the board of commissioners of said county shall audit and settle the same.”

Section 6: “All territorial roads authorized to be laid out by any law of this territory, and not yet commenced, shall be laid out in the manner prescribed by this act, and the commissioners shall comply with all the regulations herein contained; and further, the established width of all territorial roads shall be **seventy feet**, unless otherwise provided in the acts establishing said roads.

Section 7: “When any road shall have been located and established according to the provisions of this act, the same shall be and forever remain a public highway, and shall be opened and worked by the counties through which it shall be laid as county roads are, and no part of the expense of laying out and establishing any territorial road, or of the damages sustained by any person or persons in consequence of laying out any territorial road, shall be paid out of the territorial treasury.”

Section 8: “The officers and persons engaged in laying out any territorial road authorized by law, shall be entitled to the following fees, to wit: The surveyor shall be entitled to the sum of four dollars per day for the time he shall be engaged in surveying, platting and reporting on said territorial road; each commissioner shall be entitled to the sum of two dollars per day; and each chain carrier or other assistant shall be allowed the sum of one dollar and fifty cents per day for the time occupied in making said survey.”

Section 9: “The said commissioners shall have the power, and it shall be their duty, to employ such other means as necessary to the performance of their duties, and upon presentation of the proper vouchers to the county commissioners or court, it shall be the duty of said county commissioners or court to audit and pay the same as other fees.”

Section 10: “If any person obstruct any territorial road by fencing in or across said road, or by any means whatsoever, such persons so offending shall be fined for every obstruction in the sum of, at the discretion of the court, not exceeding one hundred dollars, to be recovered by any person suing for the same before any court having

cognizance thereof, to the use of such person; and the sheriff of the county in which such obstruction may occur, shall cause the same to be removed at the cost of the person so offending.”

Section 11: “This act shall not apply to roads beginning, running through and terminating in the same county.”

Section 12: “All acts or parts of acts inconsistent with the provisions of this act shall be and they are hereby declared to be inoperative.”

2) **GENERAL LAWS OF THE TERRITORY OF KANSAS, 1859, CHAPTER 77, SECTION 66, Page 30:** “All public roads to be laid out by the supervisors of the township shall not be less than four rods [66 feet] wide, nor shall any private road be laid out more than three rods [49.5 feet] wide.” [Approved February 04, 1859]

3) **GENERAL LAWS OF THE TERRITORY OF KANSAS, 1860, CHAPTER CIV:**

A) Territorial roads “shall be opened and considered public highways sixty-six feet wide.” [Page 178]

B) County roads: the viewers are to “determine whether the public convenience requires that such road, or any part thereof, shall be sixty-six feet in width, or whether a less width than sixty-six feet would as well promote the public convenience, and report the width which, in their opinion, such road should be established and opened.” [Page 183, approved February 27, 1860] (AUTHOR’S NOTE: if no width is recorded by the viewers, the road should be considered sixty-six feet in width!)

4) **GENERAL LAWS OF THE TERRITORY OF KANSAS, 1861, CHAPTER 70, SECTION 5:** State Roads: “The board [of commissioners] shall procure necessary assistance and proceed to locate the roads upon the most direct and practicable routes, not less than sixty-six feet in width, carefully planting double stakes or stones in the exact middle, at all angles, and at distances not greater than eighty rods apart, and said roads shall be open and remain open for the purpose of public travel.” [Page 249, approved June 24, 1861] (AUTHOR’S NOTE: This comes in handy when you come across a former state road that the state turned over to the county.)

5) **UNITED STATES REVISED STATUTE 2477, ACT OF CONGRESS, 1866:** “The Act of Congress of 1866, operating with a statute of the state declaring section lines in a county containing public lands to be highways, constituted a dedication and acceptance of public land for a highway, so that when it passed into private ownership it was taken subject to the easement.” [See *Tholl et al vs. Koles, 65 Kan., Page 802*]

6) **GENERAL STATUTES OF 1868, CHAPTER 89:**

A) Section 31: “The width of all county roads shall be determined by the viewers, and shall not be less than forty feet nor more than sixty feet wide.”

B) **Chapter 89: Approved February 26, 1867; Page 908, [amended by act approved March 03, 1868; Published March 17, 1868].**

Section 1. That all section lines in the counties of Nemaha, Atchison, Jefferson, Neosho, Franklin, Washington, Marion, Chase, Osage, and Coffey, are hereby declared public highways, except section lines in Brown county which have been vacated as public highways.

Section 2. That county commissioners of the several counties above mentioned, on application, in writing, of ten freeholders, residing in the township through which a road is proposed to be opened, setting forth that the public convenience requires the opening of such road, may give notice thereof to the overseer of highways, who shall proceed, under the provisions of the road law, to open said road, **one and a half rods [24.75 feet] on each side of the section line:** *Provided*, That the provisions relative to damages, in the general road law, shall apply in all cases where damages are claimed under this act.

Section 3. This act shall take effect and be in force from and after its passage.

7) **SESSION LAWS OF 1869, CHAPTER 57, PAGE 142:** AN ACT to amend the act entitled “an act declaring section lines in the several counties herein named public highways,” approved February 26th, 1869.

Section 1. That section one of the act entitled and act declaring section lines in the several counties herein named public highways, approved February 26th, 1867, be amended so as to read as follows: Sec. 1. That all section lines in the counties of Atchison, Brown, Jackson, Neosho, Labette, Franklin, Washington, Osage, Coffey, Allen, Woodson, Saline, Ottawa, Cherokee, Bourbon and Lyon, of the State of Kansas, are hereby declared public highways, except section lines in Brown county, which have been vacated as public highways, and so much of Doniphan county, as is embraced in the townships of Wayne, Burr Oak and Washington, *Provided*, this act shall not apply to any sections in Iowa township, Doniphan county, where roads are now located and used through said sections, and shall not apply to any section lines in Doniphan county on which hedges are standing and growing, and Ottawa University farm in Franklin county .

Section 2. This act shall take effect and be in force from and after its publication in the Daily Kansas State Record. Approved March 2nd, 1869 and Published March 12th, 1869.

8) **SESSION LAWS OF 1872:**

A) Chapter 175, Section 7, Page 855: That section thirty-one of the act to which this is amendatory, shall be amended to read as follows: Section 31. The width of all county roads shall be determined by the viewers, and **shall not be less than forty feet, nor more than eighty feet wide:** *Provided*, however, that in cases of a growing hedge or stone fence, or other permanent improvement, precludes the width being forty feet without causing material damage, the viewers, in such case, may determine the width at not less than thirty feet wide. (Approved March 1, 1872)

B) Chapter 177, Page 358: AN ACT to amend “an act declaring section lines in the several counties therein named public highways”. Approved February 26, 1867, approved March 8, 1868.

Section 1. That section one of the act declaring section lines in the several counties herein named public highways, approved February 26, 1867, March 8, 1868, be

so amended as to read as follows, viz: Section 1. That all section lines in the counties of Atchison, Brown, Jefferson, Johnson, Neosho, Franklin, Washington, Marion, Chase, Osage and Coffey, State of Kansas, are hereby declared public highways, except section lines in Brown county, which have been vacated as public highways.

Section 2. This act to take effect from and after its passage and publication in the *Kansas Weekly Commonwealth*. Approved March 1, 1872 and Published March 21, 1872.

C) Chapter 178, Page 359: AN ACT to be entitled an act declaring sectional lines highways, in the county of Rice and others therein named.

Section 1. That all section lines in the counties of Rice, Greenwood, Cowley, Chase, Howard, Morris and Reno are hereby declared public highways.

Section 2. No section lines that are, at the date of the passage of this act, enclosed or under improvement, shall be opened until the same proceedings are had as are now required for the opening, changing or vacation of roads.

Section 3. All the unenclosed or unimproved highways provided in section one of this act, shall be opened by the board of county commissioners upon the presentation of a petition to said board, signed by not less than ten freeholders, residents of the county in which said highway is located: *Provided, That the width of such roads shall be sixty feet in the county of Rice, and four rods [66 feet] in the county of Reno.*

Section 4. And where said section lines, running parallel with any water course, shall be in the bed thereof, then such public highway shall be upon the bank of said water course; and where the section line run in sloughs, bluffs or other obstructions, the highways shall take the most practicable course around such sloughs, bluffs or other obstructions.

Section 5. This act to take effect and be in force from and after its publication in the *Kansas Weekly Commonwealth*. Approved February 16, 1872 and Published March 15, 1872.

D) Chapter 181, Pages 364 & 365: AN ACT declaring section lines public highways in certain counties herein named.

Section 1. That all section lines in the counties of Republic, Jefferson, Cloud, McPherson, Butler, Montgomery, Chase, Mitchell, Osborn, Miami, Sedgwick, Sumner, Neosho, Cherokee, Labette and Crawford be and are declared public highways.

Section 2. No section lines along which, at the date of the passage of this act, a hedge has been set out, or upon which permanent and valuable improvements have been erected, shall be opened until the same proceedings are had as are now required by law for the opening, changing or vacation of roads.

Section 3. The county commissioners of said counties, on a petition signed by twelve freeholders, residents in the county, and along or near the line proposed to be opened, setting forth that the section line asked to be opened as a public highway is improved in the second section of this act, shall give notice thereof to the road overseers of the different districts through which the line passes, who shall cause such road to be opened **at least one and one-half rods in width, and not exceeding two rods in width, on each side of the section line.**

Section 4. That when it shall be impracticable to open a highway on any part of a section line, and the petition sets forth this fact, the board of county commissioners in which said road is to be opened shall order the road overseer in the district or districts where said roads are sought to be opened, to take three disinterested freeholders of said district or districts and view that part of the line declared in the petition to be impracticable, and to lay the road as near the section line a may be practicable, and report in writing, and under oath, to the county commissioners, the amount of damages by them assessed on this part of the road, if any are claimed; and the provisions relative to damages in general road law shall apply in all cases where damages are claimed under this act.

Section 5. Chapter one hundred and thirty-three of the Laws of 1871 is hereby repealed.

Section 6. This act shall take effect and be in force from and after its publication in the *Kansas Weekly Commonwealth*. Approved March 1, 1872 and Published March 28, 1872.

9) **SESSION LAWS OF 1873:**

A) Chapter 122, Page 280: AN ACT declaring sectional lines in Wabaunsee, Wilson, Smith, Jewell, Barton, Harvey, Kingman, Pratt, Lincoln and Russell counties, State of Kansas, public highways.

Section 1. That all sectional lines in the counties of Wabaunsee, Wilson, Smith, Jewell, Barton, Harvey, Kingman, Pratt, Lincoln and Russell, State of Kansas, be and are hereby declared public highways.

Section 2. That the county commissioners of said counties on application in writing of ten freeholders or householders residing in the vicinity through which a road is proposed to be opened, setting forth that the public convenience requires the opening of such road, may give notice to the road overseer, or overseers, who shall proceed under the provisions of the road laws to **open said road at least fifty feet and not over sixty feet in width along said sectional line:** *Provided,* That where damages are claimed under the provisions of this act, they shall be assessed by the county commissioners, after hearing evidence: *And provided further,* That notice of the presentation of such petition shall be given as provided in the general road law, and the commissioners shall hear and consider any remonstrances that may be presented to them.

Section 3. Where it shall not be practicable on any part of a section line to locate a road, and the application shall so state, the road overseer shall take three disinterested freeholders of the county, and shall locate the road as nearly as practicable to said section line, and if damages are claimed shall assess the same and report in writing and under oath to the county commissioners.

Section 4. This act shall take effect and be in force from and after its publication in the *Kansas Daily Commonwealth*. Approved March 6, 1873 and Published April 4, 1873.

B) Chapter 126, Pages 236 & 237: AN ACT relating to roads on section lines in Dickinson County.

Section 1. That all section lines in the county of Dickinson, except as herein specified, are hereby declared public highways.

Section 2. Section lines that are at the date of the passage of this act enclosed, or under improvement, shall not be considered opened until the same proceedings are had as are now required by law for the opening, changing or vacation of public roads.

Section 3. The unenclosed or unimproved highways, provided in section one of this act, shall be opened by the board of county commissioners upon the presentation of a petition signed in each case by at least ten freeholders, who shall be residents of the county. **The width of such roads shall be not less than sixty feet.**

Section 4. Where said section lines run in the bed of any water course, then such public highways shall be established upon the bank of such water course; and where section lines run in sloughs or across bluffs or other obstructions, rendering the location of roads impracticable, then such highways shall take the most practicable course around such sloughs, bluffs, or other obstructions.

Section 5. That where the board of county commissioners shall establish any highway, as provided in this act, they shall cause notice thereof to be given to the road overseer, in the district in which such road is located, who shall open the same: *Provided*, That the provisions in the general road law relating to damages shall apply in all cases where damages are claimed under this act. [As amended by act approved March 3, 1868. Published March 17, 1868.]

Section 6. This act shall take effect and be in force from and after its passage and publication in the *Kansas Weekly Commonwealth*. Approved March 5, 1873 and Published April 3, 1873.

10) **SESSION LAWS OF 1874:**

A) Chapter 108, Section 28, Page 174: The width of all county roads shall be determined by the viewers at the time of establishing the same, and shall **not be more than eighty nor less than forty feet**: *Provided*, That in cases where a growing hedge or other permanent improvement, the removal of which would cause too great an expense, the viewers may determine the width of the road at not less than thirty feet; and in cases where a growing hedge or permanent improvements on or near one side of the proposed road precludes the road being laid equally on both sides of the line, the viewers may establish all or any part of said road on the side of the section line not encumbered by improvement. Approved March 04, 1874.

B) Chapter 111, Page 178: AN ACT declaring sectional lines in Rooks, Phillips, Norton and Pawnee counties, state of Kansas, Public Highways.

Section 1. That all sectional lines in the counties of Rooks, Phillips, Norton and Pawnee, State of Kansas, be and are hereby declared public highways.

Section 2. That the county commissioners of said counties, on application in writing of ten freeholders or householders, residing in a vicinity through which a road is proposed to be opened, setting forth that the public convenience requires the opening of such road, may give notice to the road overseer or overseers, who shall proceed under provisions of the road law to **open said road, at least fifty feet and not over sixty feet in width, along said sectional line**: *Provided*, That where damages are claimed under provisions of this act, they shall be assessed by the county commissioners, after hearing evidence: *And provided further*, That notice of the presentation of such petition shall be

given as provided in the general road law, and the commissioners shall hear and consider any remonstrance that may be presented to them.

Section 3. Where it shall not be practicable on any part of a sectional line to locate a road, and the application shall so state, the road overseers shall take three disinterested freeholders of the county, and shall locate the road as near as practicable to said section line, and if damages are claimed, shall assess the same, and report in writing and under oath to the county commissioners: *Provided, That when the said road should deviate from the section line, that portion shall be surveyed and platted by the county surveyor, and said plats shall be returned to the county clerk's office.*

Section 4. This act shall take effect and be in force from and after its publication in the *Kansas Daily Commonwealth*. Approved March 6, 1874 and Published March 22, 1874.

C) Chapter 112, Page 179: AN ACT to provide for the opening of private Roads or Highways.

Section 1. That when any landholder, who has no road or highway, desires the benefit of a road or highway, such person may petition the county commissioners of the county in which person resides to open a private lane or road to a public highway, when it shall be the duty of said commissions to appoint three disinterested viewers to view and open a lane or road by the nearest and most practicable route to an established highway: *Provided, That said lane or road shall follow or run parallel with some section or subdivision line; said road not to exceed two rods in width.*

Section 2. Said viewers shall assess all damages, when damages are claimed, and the road shall be declared open when the damages, if any, are paid.

Section 3. That no portion of the expense of viewing and locating roads under this act shall be chargeable to the county or state, but shall be paid by the person for whose benefit the road is located.

Section 4. This act to take effect and be in force from and after its publication in the *Kansas Farmer*. Approved March 7, 1874 and Published March 25, 1874.

11) SESSION LAWS OF 1876:

A) Chapter 121, Pages 237 & 238: AN ACT to amend section one of chapter one hundred and seventy-seven of the session laws of 1872.

Section 1. That section one of the act declaring section lines in the several counties herein named public highways, approved February 26, 1867, March 3, 1868, be so amended to read as follows, viz: Section 1. That all section lines in the counties of Brown, Neosho, Franklin, Washington, Marion, Chase and Coffey, State of Kansas, are hereby declared public highways, except section lines in Brown county which have been vacated as public highways.

Section 2. That chapter one hundred and seventy-seven, session laws of eighteen hundred and seventy-two, be and the same is hereby repealed.

Section 3. This act shall take effect and be in force from and after its passage, and publication in the statute book. Approved March 3, 1876.

12) **SESSION LAWS OF 1877:**

A) Chapter 159, Page 212: AN ACT amending an act declaring section lines public highways, in certain counties in the State of Kansas.

Section 1. That section one of chapter 172 of the session laws of 1873 be and is hereby amended to read: That all section lines in the counties of Wilson, Wabaunsee, Brown, Kingman, Jackson, Pratt, Lincoln, Jewell, Russell, Barton, Harvey, Ellsworth, Ellis, Ford, Nemaha, Rush, Edwards and Crawford are hereby declared public roads.

Section 2. That section one of chapter 172 of the session laws of 1873, to which this is amendatory, is hereby repealed.

Section 3. That this act shall take effect and be in force from and after its publication in the *Commonwealth*. Approved February 28, 1877 and Published March 1, 1877.

B) Chapter 161, Pages 214 & 215: AN ACT declaring sectional lines in Edwards County, Kansas, public highways.

Section 1. That all sectional lines in the county of Edwards be and are hereby declared public highways.

Section 2. That the county commissioners of said counties [county], on application, in writing, of ten freeholders or householders, residing in a vicinity through which a road is proposed to be opened, setting forth that the public convenience requires the opening of such road, may give notice to the road overseer or overseers, who shall proceed under the provisions of the road laws to open said road **at least sixty feet and not over sixty-six feet in width**, along said sectional line: *Provided*, That previous to any petition being presented for the opening of any road under the provisions of this act, notice of such presentation shall be given by publication for at least three consecutive weeks in some newspaper published in the county, if any be published therein, and if none be published therein, by posting up written or printed notices in every township through which any part of said road is designed to be opened; which advertisement shall state when such petition is to be presented, and the substance thereof: *And provided further*, That at the time of such presentation, the commissioners shall hear and consider any remonstrances and claims for damages and the evidence relating to such claims for damage; and when damages are allowed under this act, they shall be assessed by the county commissioners.

Section 3. Where it shall not be practicable on any part of a sectional line to open a road, and the application shall so state, the road overseer shall take three disinterested freeholders of the county and shall locate the road as near as practicable to said section line; and if damages are claimed by reason of such variation, shall assess the same and report in writing, under oath, to the county commissioners: *Provided*, **That when the said road shall deviate from the section line, that portion shall be surveyed and platted by the county surveyor, and said plat returned to the county clerk's office and filed.**

Section 4. This act shall take effect and be in force from and after its publication in the statute book. Approved March 6, 1877.

13) SECTION 5075, GENERAL STATUTES OF 1879 [REFERRED TO AS THE “NON-USER” STATUTE]

Provided: “That any county road or part thereof, which has heretofore or may hereafter be authorized, which shall remain **unopened** for public use for a space of seven (7) years at any one time after the order made or the authority granted for opening the same, shall be and the same is hereby vacated, and the authority granted for erecting the same is barred by the lapse of time.”

14) SESSION LAWS OF 1879:

A) Chapter 154, Pages 275, 276 & 277: AN ACT relating to roads on section lines in Marshall County.

Section 1. That all sectional lines in the County of Marshall are hereby made and declared public highways on the conditions and with the exceptions herein specified.

Section 2. Section lines that run over, across or through streams, sloughs, ravines, bluffs or other obstructions that render the location of public highways thereon expensive, impracticable or impossible, shall not be public highways until the same proceedings are had as are now required to establish a public highway.

Section 3. Section lines that at the date of the passage of this act are under improvement, and those upon which a hedge is growing, or permanent stone fence is built, and those that run through any body of land owned and occupied or used as one and the same farm, shall not be public highways until the same proceedings are had as are now required by law to establish a public road.

Section 4. All section lines in Marshall county not excepted and exempted from the operations of this act by the two next proceeding sections shall be opened to public use as public highways by the county board of said county, on the presentation at one of their regular meetings of a petition in writing, signed by twenty freeholders or householders residing in the vicinity through which the road is proposed to be opened, asking that such road be opened, and setting forth that the public convenience requires it.

Section 5. Before any such petition shall be presented to the county board, notices of the intention to present such petition shall be given by publication for three consecutive weeks in the official paper of the county, and the last publication of such notice shall be made at least ten days before the meeting of the board at which the petition is to be presented.

Section 6. Whenever the county board shall order a road opened under the provisions of this act, the county clerk shall notify the county surveyor of such action of the board, in which notice shall be given the description of the road to be opened. Within thirty days of receipt of such notice the county surveyor shall run out and survey such road conspicuously, marking it throughout, and noting courses and distances, and shall make and deliver to the county clerk without delay a correct and certified return of the survey of said road and a plat of the same.

Section 7. Where damages are claimed because of the opening of any road under the provisions of this act, the application for all such damages must be filed with the county clerk, on or before the first day of the meeting of the county board, at which the petition for such road is to be acted upon. And the county board shall assess and allow the actual damages incurred after hearing evidence.

Section 8. Any person feeling himself aggrieved by the award of damages made by the county board may appeal from the decision of the board to the district court, on the same terms, in the same manner and with like effect as in appeals from the decisions of the county board, in like cases under the general law of the state.

Section 9. **All roads established under this act shall not be less than forty feet and not more than sixty feet in width.**

Section 10. All the provisions of the general laws of the state relating to roads and highways shall govern the opening, improvement and control of roads established under this act when not inconsistent with the provisions of this act.

Section 11. This act shall take effect and be in force from and after its publication in the *Marshall County News*. Approved March 12, 1879 and Published March 22, 1879.

15) SESSION LAWS OF 1887:

A) Chapter 215, Pages 308 & 309: AN ACT declaring all section lines in Graham, Rawlins, Ness, Lane, Stafford, Decatur, Thomas, Sherman and Trego counties, Kansas, public highways.

Section 1. That section lines in the counties of Graham, Rawlins, Ness, Lane, Stafford, Decatur, Thomas, Sherman and Trego, in the state of Kansas, be and the same are hereby declared to be public highways, **and to be of the width of sixty feet.**

Section 2. If any part of the section lines in either of said counties shall be found to be impracticable, the county commissioners shall have the power to vacate any portion of the section-line roads as in this act provided for, whenever requested by a petition duly signed by the requisite number of householders as specified under the present general road laws.

Section 3. If any person owning land on either side of such section lines as herein declared public highways shall feel aggrieved by reason of enforcement of this act in declaring section lines public highways, such person shall have the right to present his claim for damages for land appropriated for road purposes under the provisions of this act to the county commissioners of the proper county as is provided in the present general road law now in force in this state, at any time within one year from the time such road is actually opened to public use over and upon his land.

Section 4. This act shall take effect and be in force from and after its publication in the official state paper. Approved March 4, 1887 and Published March 17, 1887.

16) SESSION LAWS OF 1889:

A) Chapter 229: All section lines in Seward, Meade, Haskell, Grant, Garfield, Gray, Gove, Logan, Wallace, and Stevens counties declared public highways **sixty feet wide**, with provisions. [Approved March 02, 1889 and Published March 27, 1889]

17) SESSION LAWS OF 1895:

A) Chapter 208, Page 355: AN ACT declaring all section lines in the county of Thomas public highways.

Section 1. That all section lines in the county of Thomas be and the same are declared to be public highways, **and to be of the width of sixty feet.**

Section 2. If it shall be found to be impracticable to open and make passable any highway on any part of the section lines in said county, the county commissioners of such

county shall have the power to vacate any portion of any section-line road in this act provided for, whenever requested to do so by a petition signed by the requisite number of householders, as provided in the present general road laws.

Section 3. Any person owning land on either side of any section line herein declared to be a public highway, feeling himself aggrieved by reason of the enforcement of this act, shall have the right to present to the board of county commissioners of his county his claim for damages for land appropriated for road purposes under the provisions of this act at any time within six months from the time of taking effect of this act.

Section 4. The county commissioners shall have the right to reject any one or more claims for damages for land appropriated under the provisions of this act, but in such cases no land of such claimant shall be opened or used as a public highway. The board of county commissioners, in case they deem any claim for such damages excessive, may allow such amount thereof as they may deem just, and from such decision any landowner feeling aggrieved shall have the right to appeal as in cases provided under the general road law.

Section 5. All acts and parts of acts in conflict with this act are hereby repealed.

Section 6. This act shall take effect and be in force from and after its publication in the official state paper. Approved March 1, 1895 and Published March 12, 1895.

B) Chapter 209, Page 356 & 357: AN ACT declaring all section lines in Pratt and Hodgeman counties, Kansas, public highways, and providing for the opening thereof.

Section 1. That all section lines in the counties of Pratt and Hodgeman in the state of Kansas, be and the same are hereby declared to be public highways, **and to be of the width of fifty feet.**

Section 2. If any part of the section lines in said counties shall be found to be impracticable, the county commissioners shall have the power to vacate any portion of the section-line roads as in this act provided for, whenever requested to do so by a petition duly signed by the requisite number of householders as specified under the general road laws of the state of Kansas.

Section 3. If any person owning land on either side of such section line as herein declared public highways shall feel aggrieved by reason of the enforcement of this act in declaring section lines public highways, such person shall have the right to present his claim for damages on account of the location of such road on his land and for the land appropriated for road purposes under the provisions of this act to the county commissioners as is provided in the general road law now in force in this state, at any time within one year from the time such road is opened to public use over and upon his land: *Provided*, That such road shall be considered open to public use when notice has been given by the board of county commissioners to the road overseer to open the same, and the road overseer shall have given notice to the owner or owners as provided in the general road laws at present in force in this state, and the time for opening such road shall have expired as therein provided: *Provided further*, That it shall be the duty of the county clerk to keep a record of the notice or notices issued to the road overseer or overseers under the provisions of this act, in the road record of said Pratt and Hodgeman counties, and it shall be the duty of the several road overseers to whom any such notice is issued within 30 days after receipt thereof to make return of his action thereunder to the county

clerk, showing when he received the same and the name of the owner or owners, or to whom he gave notice of the opening of said road, and the date he gave such notice and when such road was to be opened under such notice, which return shall be recorded by the county clerk in the road records of said counties: *Provided further*, That no person or persons, shall be entitled to damages under the provisions of this act where it is shown by the road records of said Pratt and Hodgeman counties, that a public road has heretofore been opened to public use over and upon his or their land.

Section 4. This act shall take effect and be in force from and after its publication in the official state paper. Approved March 1, 1895 and Published March 6, 1895.

C) Chapter 212: Chapter 229 of the Session Laws of 1889 was amended to read that all section lines in Seward, Haskell, Grant, Gray, and Stevens counties declared public highways **sixty feet wide**. [Approved March 05, 1895; published April 05, 1895]

18) SESSION LAWS OF 1901:

A) Chapter 293: Relating to Highways in Certain Counties. An ACT to amend section 2, chapter 212, of the Laws of 1895, relating to public highways in the counties of Seward, Haskell, Grant, Gray and Stevens, in the state of Kansas.

Section 1. Section 1, chapter 212 of the Laws of 1895, be and the same is hereby amended so as to read as follows: that all section lines in the counties of Seward, Haskell, Grant, Gray, and Stevens, in the state of Kansas, be and the same are declared public highways, **and to be the width of sixty feet**, except the following section lines, to wit: The section lines in the south one-half of Township 33, Range 37, and the south half of Township 33, Range 38, and the north half of Township 34, Range 37, and all the section lines in Township 35, Range 37.

Section 2. This act shall take effect and be in force from and after its publication in the statute book. Effective date May 1, 1901

19) SESSION LAWS OF 1903:

A) Chapter 412, Pages 633 & 634: AN ACT declaring all section lines in Ellis, Phillips, Decatur and Dickinson counties, Kansas, public highways.

Section 1. That all section lines in the counties of Ellis, Phillips, Decatur, and Dickinson, in the state of Kansas, be and the same are hereby declared to be public highways, **and to be of the width of sixty feet**; provided that this act shall not apply to the section lines of state lands within the boundary of Fort Hays reservation, in Ellis county, Kansas.

Section 2. If any part of the section lines in said counties shall be found to be impracticable, the county commissioners of said counties shall have the power to vacate such portion of such section lines, whenever requested to do so by a petition duly signed by the requisite number of householders, as specified under the present general road laws.

Section 3. If any person owning land on either side of section lines as herein declared public highways shall feel aggrieved by reason of enforcement of this act in declaring section lines public highways, such person shall have the right to present his claim for damages for land appropriated for road purposes under the provisions of this act to the county commissioners of such counties at any time within one year from the time such road is actually opened to public use over and upon his land, and the board of

county commissioners shall allow the claimant such damages as may have been sustained by him by the opening of such road.

Section 4. This act shall take effect and be in force from and after its publication in the statute book. Approved March 2, 1903.

B) Chapter 414, Pages 638 & 639: AN ACT to amend sections 1 and 3, chapter 209, of the Session Laws of 1895.

Section 1. That all section lines in the county of Hodgeman, in the state of Kansas, be and the same are hereby declared to be public highways **and to be of the width of fifty feet.**

Section 2. That section 3 of chapter 209 of the Session Laws of 1895 be amended so as to read as follows: Section 3. If any person owning land on either side of such section line as herein declared public highways shall feel aggrieved by reason of the enforcement of this act in declaring section lines public highways, such person shall have the right to present his claim for damages on account of the location of such roads on his land and for the land appropriated for road purposes under this act to the county commissioners, as is provided in the general road law now in force in this state, at any time within one year from the time such road is opened to the public use over and upon his land; provided, that such road shall be considered open to public use when notice has been given by the board of county commissioners to the road overseer to open the same, and the road overseer shall have given notice to the owner or owners, as provided in the general road laws at present in force in this state, and the time for opening such road shall have expired, as therein provided; *Provided further*, that it shall be the duty of the county clerk to keep a record of the notice or notices issued to the road overseer or overseers under the provisions of this act, in the road record of said Hodgeman county, and it shall be the duty of the several road overseers to whom such notice is issued, within thirty days after receipt thereof, to make return of his action thereunder to the county clerk, showing when he received the same, and the name of the owner or owners or to whom he gave the notice of the opening of said road, and the date he gave such notice, and when such road was to be opened under such notice, which return shall be recorded by the county clerk in the road records of said county; *Provided further*, that no person or persons shall be entitled to damages under the provisions of this act, where it is shown by the road records of Hodgeman county that a public road has heretofore been opened to public use over and upon his or their tract of land.

Section 3. That sections 1 and 3 of chapter 209, Session Laws of 1895, be and the same are hereby repealed.

Section 4. This act shall take effect and be in force from and after its publication in the official state paper. Approved February 21, 1903 and Published February 26, 1903.

C) Chapter 416, Pages 642 & 643: AN ACT declaring all section lines in Norton County, Kansas, public highways.

Section 1. That all section lines in the county of Norton, in the state of Kansas, be and the same are hereby declared to be public highways **and to be of the width of sixty feet.**

Section 2. If any part of the section lines in said county shall be found to be impracticable, the county commissioners of said county shall have the power to vacate such portion of such section lines, whenever requested to do so by a petition duly signed by the requisite number of householders, as specified under the present general road laws.

Section 3. If any person owning land on either side of the section lines as herein declared public highways shall feel aggrieved by reason of the enforcement of this act in declaring section lines public highways, such person shall have the right to present his claim for damages for land appropriated for road purposes under the provisions of this act to the county commissioners of said county at any time within one year from the time such road is actually opened to public use over and upon his land, and the board of county commissioners shall allow the claimant such damages as may have been sustained by him by the opening of such road.

Section 4. This act shall take effect and be in force from and after its publication in the official state paper. Approved February 26, 1903 and Published February 28, 1903.

D) Chapter 417, Page 643: AN ACT fixing the width of roads and highways in Pawnee County.

Section 1. That the width of all roads and highways in Pawnee County **shall be sixty feet, unless otherwise fixed.**

Section 2. This act shall take effect and be in force from and after its publication in the official state paper.

Approved February 28, 1903 and Published March 4, 1903.

E) Chapter 418, Page 644: AN ACT to repeal an act entitled “An act declaring sectional lines in Rooks County, state of Kansas, public highways,” being chapter 111 of the Laws of Kansas, 1874.

Section 1. That chapter 111 of the Laws of 1874, entitled “An act declaring sectional lines in Rooks, Phillips, Norton and Pawnee counties, state of Kansas, public highways,” be and the same is hereby repealed, in so far as it affects Rooks County, Kansas.

Section 2. This act shall take effect and be in force from and after its publication in the statute book. Approved February 25, 1903.

20) SESSION LAWS OF 1907:

A) Chapter 290, Page 463: AN ACT to amend section 1 of chapter 178 of the Session Laws of 1872, the same being entitled “AN ACT declaring section lines highways in the county of Rice and others therein named.”

Section 1. That section 1 of chapter 178 of the Session Laws of 1872 be amended to read as follows: Section 1. That all section lines in the counties of Rice, Greenwood, Chase, Howard, Morris and Reno are hereby declared public highways.

Section 2. That said original section 1 of chapter 178 of the Session Laws of 1872 be and the same is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the statute book. Approved March 8, 1907.

B) Chapter 291, Page 463: AN ACT to amend section 1 of chapter 412, Session Laws of 1903, entitled “AN ACT declaring all section lines in Ellis, Phelps, Decatur and Dickinson counties, Kansas, public highways,” and repealing said original section.

Section 1. That section 1 of chapter 412, Session Laws of 1903, be amended to read: Section 1. That all section lines in the counties of Ellis, Phillips and Decatur, in the state of Kansas, may, by order of the county commissioners, be and the same are hereby declared to be public highways, **and to be of the width of sixty feet**; *provided*, however, that this act shall not apply to the section lines of state lands within the boundary of Fort Hays reservation, in Ellis county, Kansas.

Section 2. That the original section 1 of chapter 412, Session Laws of 1903, be and the same is hereby repealed.

21) **SESSION LAWS OF 1911:**

A) Chapter 248: Section 12: That the width of all county roads shall be determined by the viewers at the time of establishing the same, **and shall not be more than sixty nor less than forty feet**; *Provided*, that in cases where a growing hedge or other permanent improvement, the removal of which would cause too great an expense, the viewers may determine the width of the road at not less than thirty feet; and in cases where a growing hedge or permanent improvement on or near one side of the proposed road precludes the road being laid equally on both sides of the line, the viewers may establish all or any part of said road on the side of the section line not encumbered by such improvement. Approved March 9, 1911

22) **GENERAL STATUTES OF 1923, SECTION 68-116, Page 1118:**

That the width of all county roads shall be determined by the **viewers** at the time of establishing the same **and shall not be more than sixty feet nor less than forty feet**; *Provided*, that in cases where a growing hedge or other permanent improvement, the removal of which would cause too great an expense, the viewers may determine the width of the road at no less than thirty feet; and in cases where a growing hedge or permanent improvement on or near one side of the proposed road precludes the road being laid equally on both sides of the line, the viewers may establish all or any part of the road on the side of the section line not encumbered by such improvement. [L. 1911, ch. 248, § 12; May 22.]

23) **SESSION LAWS OF 1957:**

A) Chapter 353, Page 792 & 793: AN ACT relating to the width of county roads, amending section 68-116 of the General Statutes of 1949, and repealing said original section.

Section 1. Section 68-116 of the General Statutes of 1949 is hereby amended to read as follows: Sec. 68-116. That the width of all county roads shall be determined by the viewers at the time of establishing the same, **and shall not be more than one hundred and twenty (120) feet nor less than forty (40) feet**; *Provided*, That in cases where a growing hedge or other permanent improvement, the removal of which would cause too great an expense, the viewers may determine the width of the road at not less than thirty (30) feet; and in cases where a growing hedge or permanent improvement on or near one side of the proposed road precludes the road being laid equally on both sides

of the line, the viewers may establish all or any part of said road on the side of the section line not encumbered by such improvement. The board of county commissioners shall have the authority to increase the prescribed width of any existing county road or highway in any county where such board of county commissioners deem it necessary for public safety, or proper construction of such road or highway, and shall have authority to lay out, establish and construct new county roads and highways in excess of the width prescribed in the preceding sentence where necessary for public safety, or for the proper construction of such road or highway.

Section 2. Section 68-116 of the General Statutes of 1949 is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the statute book. Approved March 30, 1957.

24) SESSION LAWS OF 1963:

A) Chapter 331, Pages 813 & 814: AN ACT relating to the width of county roads, amending section 68-116 of the General Statutes Supplement of 1961, and repealing said original section.

Section 1. Section 68-116 of the General Statutes Supplement of 1961 is hereby amended to read as follows: Sec. 68-116. That the width of all county roads shall be determined by the viewers at the time of establishing the same, **and shall not be more than one hundred and twenty (120) feet nor less than sixty (60) feet** and in cases where a growing hedge or permanent improvement on or near one side of the proposed road precludes the road being laid equally on both sides of the line, the viewers may establish all or any part of said road on the side of the section line not encumbered by such improvement. The board of county commissioners shall have authority to increase the prescribed width of any existing county road or highway in any county where such board of county commissioners deem it necessary for public safety, or proper construction of such road or highway, and shall have authority to lay out, establish and construct new county roads and highways in excess of the width prescribed in the preceding sentence where necessary for public safety, or for the proper construction of such road or highway.

Section 2. Section 68-116 of the General Statutes Supplement of 1961 is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the statute book. Approved April 12, 1963.

Section 5 – Kansas Supreme Court Case Laws:

The following court cases are a summary of the information that I have compiled through years of research. Bear in mind that a **land surveyor** compiled this information, and not a lawyer! **You can use it as a tool to aid in your research, but it should not be considered to be a final statement.** It is quite likely that I have missed some important cases, and your county counselor will probably want to do another search to satisfy himself on the completeness of this information. You should treat this information as part of your basic research **only** and not the final word on road widths and openings until you have researched the records in the specific county where you will be surveying.

1) COMMISSIONERS OF SHAWNEE COUNTY VS. BECKWITH, 10 KAN., PAGE 603 (1873 TERM)

The opinion of the court was delivered by J. Valentine, and said in part: “In this state the statutes provide for the establishment of public roads and highways (Gen. Stat. 897, Ch. 40) but both the constitution and the statutes are silent as to how much of the land, or what interest therein shall pass to the public, and how much of the land or what interest therein shall remain with the original proprietor. Therefore we would infer that nothing connected with the land passes to the public except what is actually necessary to make the road a good and sufficient thoroughfare for the public. **The public obtains a mere easement to the land.** It obtains only so much of the land, soil, trees, etc., as is necessary to make a good road. It obtains the right for persons to pass and repass, and to use the road as a public highway only, and nothing more. **The fee in the land never passes to the public, but always continues to belong to the original owner.**” [See Attorney General Opinion No. 99-53]

2) TOPEKA VS. RUSSAM, 30 KAN., PAGE 550 (JULY TERM, 1883)

The court said that the non-user statute was intended to apply only to roads that had been **authorized** but **never opened**. The court further stated that “It is our opinion that whenever a state road is located and established, and everything else is done which either the law or necessity requires to be done in order to render the road open for public use, the road is not an “unopened” road, within the meaning of chapter 50 of the Laws of 1879; and the fact that after the road had been established for ten years the public travel then, and for another ten years, passed out of the established road for a short distance, and then returns again to the road, will not vacate that portion of the road not traveled.” [Pages 560—561]

3) SHAFFER VS WEECH 34 KAN. 595 (1886)

The court held that the location of the road as originally laid out and marked controls over the county surveyors field-notes and maps:

“The map and field-notes of the surveyor, purporting to show where the road was originally surveyed and located, so not constitute the fact of the survey, no the fact of the location, but are merely statements by the surveyor with regard to such facts. A survey in such a case has nothing to do with determining where the road shall be located. This is done by the viewers alone. They view the ground and determine where the surveyor shall make his surveys and where the road shall be located; and the surveyor’s map and field-

notes are only statements made by him, as to where the survey was made and where the road was located; and are at best only evidence of such facts; and, so far as we are informed, such evidence has never been held to be conclusive, but at most only *prima facie*, and while it is controlling in the absence of other and more satisfactory evidence, yet it must always give way when the real facts as they actually occurred are shown to be in conflict with it. When the real facts as to where the road was actually surveyed and located are shown by other and better evidence, the map and field-notes can no longer control. As stated by many courts, monuments will control courses and distances, and the existence and location of monuments and lines may be proved and determined like other facts. Even where the monuments have been obliterated, lost or destroyed, their former existence and location may be shown by the parol testimony of witnesses who have knowledge of their former existence and location.”

4) **STATE VS. HORN, 35 KAN. 717, 12 PAC. 148 (1886)**

The court held: “...In order to start in operation any prescriptive right, or any right by limitation, to use a piece of ground as a public highway, the public by its constituted authorities must take the actual possession of the ground and use it as a public highway.” [35 KAN at Page 721]

5) **WEB VS. THE BOARD OF COUNTY COMMISSIONERS OF BUTLER COUNTY, ET AL, 52 KAN., PAGE 375 (JULY TERM 1893)**

The court held that the non-user statute applied only to roads **authorized** but which have never been **opened or used**. The court cited *Wilson vs. Janes, 29 Kan., Page 234, 250*, and it said that “a public highway might be opened without anything being done by the road overseers for that purpose. The people themselves along the line of the road might open it, or the public travel might at once take possession of the road and use it. And whenever a public road is traveled, it is in fact opened, although nothing may have ever been done by the road overseers for the purpose of opening it. No formal opening is ever required. It is true it may be formally opened by the several road overseers along the line of the road, but it may also be informally opened by themselves or by others, or it may be opened in fact by the public travel taking possession of it and using it....A road may be opened without either notice or work; travel alone upon such a road would be a sufficient opening of the same.”

The opinion of the court was delivered by J. Johnson, and read in part: “It is frequently the case that the full width of country roads is not improved or used, for the reason that the necessities of the public for the time being do not require it; but such limited use will not lessen the right of the public to use the entire width of the highway when the increased travel and the exigencies of the public make it necessary.” [Page 378]

6) **THOLL ET AL VS. KOLES, 65 KAN., PAGE 802 (JULY TERM 1902)**

Syllabus by the Court:

“(1) The act of Congress of 1866, giving the right of way for the construction of highways over public lands not reserved for public use [U.S. Rev. Stat. § 2477] is a present grant, and, if accepted by the legislature or the public, in an effectual manner, while the land is a part of the public domain, a highway is established.”

“(2) The act of Congress, operating with a statute of the state declaring section lines in a county containing public lands to be highways, constituted a dedication and acceptance of public land for a highway, so that when it passed into private ownership it was taken subject to the easement.”

7) SHANLINE V. WILTSIE, ET. AL.; 70 KAN. 177, 78 PAGE 436 (SUPREME COURT OF KANSAS, NOVEMBER 5, 1904)

Syllabus by the Court:

“(1) One who joined in an application for a survey for the establishment of the corners or boundaries of his land, under sections 1836-1838, Gen. St. 1889 (replaced by sections 1818, 1820, 1822, Gen. St. 1901), who was present when his land was surveyed, and who omitted to appeal from the report of the survey, is concluded by it, notwithstanding that no notice of the survey was served upon him.”

“(2) Where the report of the survey of a congressional township shows that it was begun May 13th and completed July 30th, one who wishes to challenge the result is not relieved from the necessity of appealing from the report within 30 days of the time it is filed by the fact that no adjournments are shown by the report, when there is nothing to indicate that the surveying operations were not continuous between the dates named. In such case it will be presumed that no adjournments were had except those from one day to the next, and these need not be noted in the report.”

“(3) Where residents along a section line mark out a road following such line as then understood to be located, and such road is generally traveled and is improved and put in repair by the township officers, such acts will not be interpreted as a dedication and acceptance for highway purposes of the strip of land actually marked out, used, and worked, where it is found that it in fact departs from the true position of the section line.”

“(4) Where a legal highway is duly established by order of the county board along a section line, but the road actually traveled through misapprehension departs somewhat from the true line at one place, such conditions, for however long continued, will not operate to affect an abandonment of the public easement over the true course, or to create by prescription or limitation a right of way over the tract actually used for travel.”

The Court discussed the difference between this decision and the decision in *Shaffer v. Weech*: “An entirely different question is presented where the general travel departs from the true course of a laid-out road, not by reason of a mistake as to its location, but in consequence of a deliberate purpose to choose a different route. In such cases a design is manifested to substitute one route for another, to which effect may be given consistently with the principle stated. See Gulick v. Groendyke, 38 N. J. Law (9 Vroom) 114; Almy v. Church (R. I.) 26 Atl. 58; Wakeman v. Wilbur (N. Y.) 42 N. E. 341. Shaffer v. Weech, 34 Kan. 595, 9 Pac. 202, is also in harmony with this principle. There the viewers gave to a road a definite location, determined not by any surveyor's line, but by the surface character of the district traversed. The road overseer opened it, and the public used it in accordance with such location. It was found that the surveyor's map and field notes did not accurately correspond with the position of the road as marked out by the viewers. Under these circumstances it was held that the road should not be changed to the position indicated by the surveyor's record, that this was merely so much evidence as to where the location was in fact made, and that this evidence was overcome by satisfactory proof of a different location. In that case the surveyor simply undertook to

make a correct description of the road as located. The intention was that the line he described should conform to the route taken by the road. Here the intention was that the route of the road should conform to the section line, wherever situated.”

8) THE BOARD OF COUNTY COMMISSIONERS OF COWLEY COUNTY, ET AL, VS. JOHNSON, 76 KAN., PAGE 65 (JANUARY TERM, 1907)

Syllabus by the court:

“(1) Where an act of the legislature declares all section-lines in a certain county to be public highways, and provides that they shall be opened by the board of county commissioners upon the petition of ten householders, such section-lines thereby become county roads within the meaning of that term as used in the statute of 1879 [Gen. Stat. 1901, § 6058] providing that any part of a state or county road not opened within a stated time shall be vacated.”

“(2) In the case of a county road so established by special act the provision of the statute of 1879 that any county road shall be vacated if it remains unopened for seven years after “the order made or the authority granted for opening the same” refers to the time that the act is passed and not to the time an order for the opening of the road is made by the county commissioners.”

“(3) Such a county road, created prior to the enactment of 1879, and remaining unopened for travel for seven years thereafter, was vacated in consequence of such omission; the easement of the public therein has been lost and can only be reacquired by new proceedings.”

The court noted that “The statute of 1879 allowed those interested seven years in which to avail themselves of the privilege offered. We think it was the legislative intent that if no advantage should be taken of it within that time it should be withdrawn.” (Pages 69 & 70).

9) EBLE VS. THE STATE OF KANSAS, EX REL, 77 KAN., PAGE 179 (JANUARY TERM, 1908)

Syllabus by the court:

“(3) The statute vacating roads and barring authority for opening roads which have remained unopened for seven years after orders have been made or authority has been granted for opening them does not apply to a discontinuance of use after a road has been opened.”

“(4) A private individual cannot obtain title to a public highway by **adverse possession**. Lapse of time will not bar the remedies of the state against encroachment upon a highway. An obstruction to the public use of a highway is a continuing nuisance, and no equities in favor of a person committing such a nuisance can be founded upon the acquiescence of the highway or other officials or upon their laches in taking steps to punish or abate it.”

10) KIEHL VS. JAMISON, 79 KAN., PAGE 788 (JANUARY TERM, 1909)

Syllabus by the court:

“(1) Where open and unobstructed lands lying wholly outside the corporate limits of a city have been regularly platted and laid out as an addition and the streets dedicated to the public, such streets or roads can not be regarded as unopened and unused within the

meaning of section 6058 of the General Statutes of 1901, making county roads vacant which have remained unopened of public use for seven years.”

“2) Neither the failure of the county authorities formally to open up and work the streets in such an addition nor the fact that such streets have not been used by the public will make them in law closed or unopened streets, where everything was done at the time the plat was filed which was necessary to open them for public use.”

The court went on to comment: “It was held in *Webb v. Commissioners of Butler Co.*, 52 Kan. 375, 34 Pac. 973, following *Peck and another v. Clark et al.*, 19 Ohio, 367, and *City of Topeka v. Russam*, 30 Kan. 550, 2 Pac. 669, that this provision of the statute applies only to roads authorized but which have never been opened or used, and that a road can not be regarded as unopened or unused where the country through which it lies was open and unobstructed at the time it was authorized and established.”

This case also quotes from *City of Topeka vs. Russam* from Case Number 2: “As Mr. Justice Valentine tersely stated the matter in the opinion in that case: “Indeed the road was virtually opened. It was located and established in full compliance with the law; and there was nothing to prevent the public from traveling over it. It was not **closed** or **enclosed**. It was not **shut up**. It was not **obstructed**. And if the road was not closed or enclosed or shut up or obstructed, it must have been opened; and a road that is open can not well be an unopened road.” [Page 559]

11) RULE VS. EAGLE TOWNSHIP IN BARBER COUNTY, 110 KAN., PAGE 517 (JANUARY TERM, 1922)

Syllabus by the court:

“(1)” The provisions of the statute (now repealed) that a road should be vacated if permitted to remain unopened to public use for seven years at a time cannot effect the vacation of a road through the existence of an obstacle to travel constructed only three years before its repeal.”

“(2) Where a highway is laid out running north and south and then east, and the last quarter of a mile before reaching the turn is so intercepted by ravines that it cannot be well traveled until improved, the fact that travelers avoid all obstacles in one detour and strike the east road at an angle does not amount to an abandonment of any part of the road as established.”

This case made the comment that the non-user statute was repealed by Section 55, Chapter 248 of the Session Laws of 1911.

12) STATE OF KANSAS, EX REL VS. PAUL, 112 KAN., PAGE 826 (JANUARY TERM 1923)

Syllabus by the court:

“(4) The fact that the surveyor called to aid the viewers of the road petitioned for ran his line on the west side of the proposed road, instead of along its center according to the general custom of land surveyors, is of no importance when the location of the road is otherwise clearly determined from the record.

“(5) Where a public highway is petitioned for to take the place of another 60-foot highway condemned for a railway right-of-way, and the new road is viewed, recommended, approved and ordered to be opened as recommended, “of the same [60] feet as the old road,” and such new road is in fact opened and traveled, such opening and

use created and perfected the public right to a highway of the full width of sixty feet; and the fact that the full width of the road has never been thus used and that adjacent property owners were permitted to maintain hedges, fences, shade trees and other obstructions to the center of the established road and that the public travel has always been to the other side of the road, does not lessen the public right to the use of the full width of the road whenever the expanding needs of the public so require.”

13) MALL VS. C W RURAL COOP ASS’N, 168 KAN. 521 (1950)

The supreme court of Kansas stated it this way in regards to utilities within the public road right-of-way:

“We would not alter the rule long established in this state that the use of rural highways for the erection or laying of telephone lines, electric transmission lines, water mains, gas pipe lines or other public utilities, does not create an additional servitude entitling the fee owner to additional compensation. That rule is too well established to say now that such public utilities must obtain permission of the abutting landowner and pay him for the right to lay or erect its lines along the highway right of way.” The court goes on to say that the utility cannot “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 invasions of the rights of the owners of abutting lands.”

14) CITY OF OSAWATOMIE VS. SLAYMAN, 185 KAN.631, 347 P.2D 405 (1959)

The Jury instructions stated in substance: “....A public way may be established by **prescription** by fifteen years’ adverse possession if during the time the public openly, notoriously, and adversely uses the land against the landowner’s will. Use by the owner’s permission will **not** ripen into adverse possession no matter how long used.”

15) KOLLHOFF VS. BOARD OF COUNTY COMMISSIONERS OF RENO COUNTY, 193 KAN. 370 (394 P.2D 92) (1964).

The trial court findings held:

“2) The section line in question was not used as a road by the public, other than possibly as casually made over unimproved and vacant land by travelers of their own notion and for their own convenience.”

“3) For more than 7 years after enactment of the non-user statute of 1879 said section line was not enclosed, fences, in cultivation, or otherwise obstructed in any manner to prevent the public from using same as a road if they so desired. It was open ‘in fact.’”

“5) Petitioner did not acquire title to said roadway area [the 33 foot strip] by adverse possession, or because of nonuse, but same remains in Reno County.”

“6) That from approximately 1900 to the present date [1963], the section line running along the north side of Plaintiff’s property was obstructed and closed off from public use by trees running in an east-west direction along a part of the section line and there was also a fence along the tree row, which trees and fence have been planted and erected by adjacent landowners; and subsequent to 1900 there was a hedge running north and south along the east end of the Plaintiff’s property in question; and that the land in question adjacent to the north section line has been in cultivation from approximately 1900.”

The trial court’s conclusions of law were:

“A) Said section line roadway in question was legally established and was open sufficiently that said non-user statute of 1879 did not apply.”

“B) That petitioner’s application for an injunction should be and the same is hereby denied, and the temporary restraining order heretofore issued herein is dissolved.”

“C) Accordingly, the defendant’s procedure under 1949 G. S. 68-114 to widen and alter an **existing** roadway is valid.”

The Supreme Court of Kansas affirmed the decision.

16) KRATINA VS. BOARD OF COUNTY COMMISSIONERS, 219 KAN., 499, 548 P.2D 1232 (1976)

The court held: “In Kansas as elsewhere a public roadway may be established in three different ways: by purchase or condemnation, by prescription, or by dedication.”

Syllabus by the Court:

“1) To establish a public road by **prescription**, there must be a use by the public which is adverse to the rights of the owner.”

“2) To establish a road by **implied dedication**, there must be an acceptance of the grant by the public, although such acceptance need not be formal.”

“3) Mere use by the traveling public is not enough to establish either that the use is adverse or that the public has accepted an implied dedication. There must in addition be some action, formal or informal, by the public authorities indicating their intention to treat the road as a public one.”

The court commented: “The basic elements of that doctrine were set forth in *Shanks vs. Robertson*, 101 Kan. 463, 465; 168 Pac. 316, where the court quoted and applied the following from 37 Cyc. 21: ‘To establish a highway by prescription the land in question must have been used by the public with the actual or implied knowledge of the landowner, adversely under claim or color of right, and not merely by the owner’s permission, and continuously and uninterruptedly, for the period required to bar any action for the recovery of possession of land or otherwise prescribed by statute. When these conditions are present a highway exists by prescription; otherwise not.’”

In examining prior case laws, the court found and adopted a common fact as controlling: “In each it was held that **only when public officials took steps to improve or maintain the road** was their evidence clearly establishing that the public looked on the road as a public way and used it as a matter of claimed right.” (Emphasis added: 219 Kan. on Page 504)

17) BIGGS FEED AND GRAIN, INC. VS. CITY OF WAVERLY, 3 KAN., APP. 2D 423, 424, 596 P.2D 171 (1979)

Syllabus by the court:

“*Public Road Established by Prescription – Requirements:* “To establish a public road by prescription there must be some action, formal or informal, by public authorities indicating their intention to treat the road as a public one. Where, as here, a city has used roads for 46 years and has expended funds and labor on them by grading, ditching, rocking and other upkeep for 19 years, the city has a right-of-way by prescription.”

18) GRONNIGER V. BOARD OF COUNTY COMMISSIONERS OF DONIPHAN COUNTY, COURT OF APPEALS OF KANSAS NO. 52165, 631 P.2D, 1252 (1981)

Syllabus by the court:

“It is the duty of the board of county commissioners of each county to maintain its county roads only along the true course of any such road, as originally laid out or subsequently officially altered, and, when necessary, to cause the county surveyor to take such corrective action as may be necessary to maintain the true course of the road, keep the same in repair, and remove or cause to be removed all obstacles that may be found therein. To this end, mandamus is proper.”

The court went on to say: “As provided by K.S.A. 60-801, “(m)andamus is a proceeding to compel some inferior court, tribunal, **board**, or some corporation or person to perform a specific duty, which duty results from the office, trust, or official station of the party to whom the order is directed, or from operation of the law.”

19) SCHROEDER VS. URBAN, 76 KAN. P.2D 188 (KANSAS COURT OF APPEALS, 1988)

Syllabus by the Court:

“1) A public road may be established by purchase or condemnation, by prescription, or by dedication.”

“2) A public road established by prescription requires that the road be used by the public with the actual or implied knowledge of the landowner and the use be adverse and continuous for fifteen years.”

“3) If public officials take positive actions, either formally or informally, to maintain or improve the road, the owner is put on notice that the public authority is claiming a right to the road.”

20) STATE OF KANSAS VS. DEINES, KANSAS SUPREME COURT CASE NO. 82,433 IN 2000

Syllabus by the Court:

“1) A public nuisance is an unreasonable interference with a right common to the general public, such as a condition dangerous to the health, offensive to community moral standards, or unlawfully obstructing the public in the free use of public property.”

“2) Where there is an obstruction across a public right-of-way which obstructs the travel of an individual, the obstruction is a nuisance per se and the affected individual may remove the obstruction by way of abatement.”

“3) It is the duty of the board of county commissioners of each county to maintain its county roads along **only** the true course of such road as originally laid out or subsequently officially altered and, when necessary, to cause the **county surveyor** to take such corrective action as may be necessary to maintain the true course of the road, keep the road in repair, and remove or cause to be removed all obstacles that may be found thereon.”

“4) By statute, the county engineer or township trustee is charged with maintaining a county road and shall keep the county roads in repair and remove or cause to be removed all obstructions that may be found thereon.”

“5) A county has no statutory authority to informally designate others as its agent to maintain county roads.”

21) STRAMEL VS. BISHOP, KANSAS COURT OF APPEALS CASE NO. 84,413 IN 2000.

Syllabus of the Court:

“1) A public roadway may be established in Kansas by a prescriptive easement.”

“2) To establish a highway by prescription the land in question must have been used by the public with the actual or implied knowledge of the landowner, adversely under claim or color of right, and not merely by the owner’s permission, and continuously and uninterrupted, for the period of time to bar an action for the recovery of possession of land or otherwise prescribed by statute. When these conditions are present a highway exists by prescription; otherwise, it does not.”

“3) The adverse possession statute, K.S.A. 60-503, is used to determine whether the elements of a prescriptive easement are present.”

22) CARLSON VS. STEHLIK, KANSAS SUPREME COURT CASE NO. 84,653 IN 2001.

Syllabus of the court:

“2) A public roadway may be established in three different ways: (1) by statute, (2) by prescription, or (3) by dedication. Dedication may either be express or implied. An express dedication is usually accomplished by deed or written instrument. Implied dedication, on the other hand, is a doctrine recognized at common law and is often referred to as ‘common-law dedication’ or ‘dedication by estoppel’.”

“3) The party asserting that a roadway has been dedicated for public use bears the burden of proof and must show: (1) an intent by the property owner to dedicate the land for such use; and (2) acceptance by the public. Failure to prove either of the elements is fatal to the party asserting implied dedication.”

“4) Intent may be evidenced by the specific acts of the property owner or may be inferred from his or her acts and declarations. Implied dedication requires a clear and unequivocal intention on the part of the landowner to provide the land for public use.”

“5) Acquiescence of property owners to a private roadway’s use by some members of the public does not conclusively establish its dedication to the borough for public use. Mere permission on the part of the owner to the public to use the land as a way, without more, will not constitute an intention to dedicate since a temporary right to use a private way is in the nature of a mere license, revocable at pleasure, and does not in any sense establish the requisite intent. Accordingly, mere permissive use of land as a street or the like, where the user is consistent with the assertion of ownership by the alleged dedicator, does not of itself constitute a dedication or demonstrate a dedicatory intention.”

“6) Mere travel or use by the public on a roadway is not enough to establish an implied dedication of a public roadway. Some sort of action by the public body indicating acceptance is required. In order to demonstrate implied acceptance of a thoroughfare solely by means of public use the plaintiffs must demonstrate (1) actual use by the unorganized public; (2) that the use has continued over a significant period of time; (3) that the use is not merely with the consent of the abutting owners, but evidences

a claimed right of public travel; and (4) that the use justifies the conclusion that the way is of common convenience and necessity.”

“(7) Maintenance or improvement by a municipality or county can support a finding of implied acceptance of a private road for public use since governmental entities are not likely to devote public money to private roads.”

23) STONE V. U. S. D. NO. 222 AND HADDAN, KANSAS SUPREME COURT CASE NO. 90,317 IN 2003

This case involves railroad right-of-way.

Syllabus by the court in part:

“(1) A railroad may acquire an interest in real property by eminent domain, by purchase, or by voluntary grant. K.S.A. 66-501 provides that every railway corporation has the power to purchase and hold, with power to convey, real estate, for the purpose of aiding in the construction, maintenance, and accommodation of its railway.”

“(2) If a railroad owns the land under its tracks in fee simple, the abandonment of rail service does not affect its property rights at all. However, in Kansas, railroads take only an easement in strips taken for railroad right-of-way regardless of whether taken by condemnation or deed. Upon abandonment, the strip reverts back to the original landowners.”

Section 6 - ATTORNEY GENERAL OPINIONS

The following attorney general opinions are a summary of the information that I have compiled through years of research. Bear in mind that a **land surveyor** compiled this information, and not a lawyer! **You can use it as a tool to aid in your research, but it should not be considered to be a final statement.** It is quite likely that I have missed some opinions that might be important, and your county counselor will probably want to do another search to satisfy himself on the completeness of this information. You should treat this information as part of your basic research **only** and not the final word on road widths and openings until you have researched the records in the specific county where you will be surveying. Keep in mind that attorney general opinions are just opinions, and answer a question in general until such matter is established by the courts. The opinions are based on state law at the time, and the older the opinion the more likely the law has changed and rendered the opinion obsolete in at least some of the details.

1) 81-242: Roads and Bridges—County and Township Roads—Use of Seismographic Equipment on County Roads.

Synopsis: A county may not permit private companies to operate seismographic equipment on county roads unless the county **owns the road in fee**. An easement for a public road grants the right to use the property for public travel, but does not impair other rights retained by the landowner. Cited herein: KSA 1980 Supp. 19-101a, KSA 19-212. October 14, 1981.

NOTE: The opinion quotes *State v. Green, 5 Kan. App. 2d 698 (1981)*: “The public’s right to use a public highway is the right to use it for purposes of travel. It does not encompass a right to deliberately deprive another person of the use of his property.” *Id.* At Syl. ¶ 5.

2) 81-256: Roads and Bridges—Bridges; General Provisions—Conveyance of Unsafe Bridge.

Synopsis: A bridge located on a vacated county road in which the county held only an easement for a public road reverts to the adjoining landowners at the time of vacation. If the bridge was declared unsafe prior to vacation of the road, the provisions of K.S.A. 68-1123 must be honored. However, once a road and bridge have been vacated and have reverted to the adjoining landowners, the county has no continuing exposure to tort liability for injuries caused to persons injured while using such vacated roadways and bridges. Cited herein: K.S.A. 68-1126, K.S.A. 1980 Supp. 75-6101, 75-6103. November 23, 1981.

3) 82-27: Roads and Bridges—County and Township Roads—Laying of Pipelines and other Public Utility Uses of Roadways.

Synopsis: Oil and gas pipeline companies and public utility companies have the authority to construct and maintain lines over, upon and under public roads by virtue of their statutorily-granted powers of eminent domain. However, such use may not interfere with the use of the road for highway purposes. Cited herein: K.S.A. 17-618, K.S.A. 1980 Supp. 17-4804. February 05, 1982.

4) 82-228: Roads and Bridges—Establishment—Authority to Grant easements Along Township Roads.

Synopsis: The board of county commissioners is empowered by statute to lay out all public roads in a county, even if the road is termed a township road for purposes of maintenance. If the land underlying the road was taken by eminent domain, the county acquires only an easement for road purposes, leaving the authority to grant additional easements vested in the owners of the land abutting the road, *i.e.* the fee holders of the servient estate. Such rights are limited, however, in that any conveyance by the fee holders may not interfere with public use of the road. Cited herein: K.S.A. 12-309, 19-212, 68-106, 68-114, 68-115, 68-502, 86-518c, 68-526. October 21, 1982.

5) 87-124: Roads and Bridges; Roads—State Highways—Responsibility to Accept Abandoned State Highways.

Synopsis: K.S.A. 68-406 gives the secretary of transportation the power to remove from the state highway system roads which have little or no state-wide significance. The statute by implication therefore requires counties to accept legal responsibility for abandoned state highways. However, a board of county commissioners is empowered to vacate any abandoned highway for which it has accepted responsibility, if the commissioners determine that the cost of maintenance exceeds any practical use in retaining the highway under its jurisdiction. Cited herein: K.S.A. 68-102; 68-1021a; 68-107; 68-406. August 21, 1987.

6) 87-173: Counties and County Officers—General Provisions—Powers Generally; Home Rule. Automobiles and Other Vehicles—Uniform Act Regulating Traffic; Size, Weight and Load of Vehicles—Restricting Use of Highways.

Synopsis: Pursuant to Kansas law, counties may impose limitations as to the size and weight of vehicles on certain roads. Constitutional restrictions apply to such regulations and require that every classification be reasonable and rest upon a rational basis which serves a valid governmental purpose. The proposed regulation restricting weight on county roads should apply equally to all vehicles under the same circumstances and conditions. Cited herein: K.S.A. 19-101 Fifth; K.S.A. 1986 Supp. 19-101a; K.S.A. 8-1912(f); U.S. Constitution.

7) 93-117: Roads and Bridges: Roads—General Provisions; Laying Out and Opening Roads—Requirements that Roads be Accepted by County.

Synopsis: A county road is established upon recording the survey and plat of the same. The degree of improvement or maintenance of county roads is discretionary with the county. A county may have a cause of action against a developer for failure to build subdivision roads in compliance with county requirements. Cited herein: K.S.A. 12-749; 12-762; 19-2918, repealed L. 1991, ch. 56, sec. 28; 19-2918c, repealed L. 1991, ch. 56, sec. 28; 68-102; 68-701; 68-728. August 27, 1993.

8) **94-116: Roads and Bridges—General provisions; Laying Out and Opening Roads—Petition for Laying Out, Viewing, Altering or Vacating Roads; Vacation in Certain Counties without Petition.**

Roads and Bridges—General provisions; Guideposts, Repairs, Detours and Gates—Highways through Pastures.

Synopsis: A county commission has the authority to designate an “open range road.” Subsequently a township is responsible for the maintenance and repair of the road if the road is a township road. A county commission has the authority to vacate a road. Compensation for township officials varies with the township and duties of the officials. Cited herein: K.S.A. 68-102; 68-114; 68-128a. September 9, 1994.

9) **99-53: Roads and Bridges—County and Township Roads—Laying Out and Opening Roads; Petition for Laying Out, Viewing, Altering or Vacating Roads; Authority of County to Regulate Subsurface of Section Line Roads.**

Synopsis: Counties have authority to deny a request for use of a section line road right-of-way to bury pipelines, cable or conduit only if the task would impair or frustrate public travel on the road. Being the easement holder itself, a county has no authority to grant an additional easement as a method of regulating the subsurface of section line roads; thus a county may not require an application for an easement. However, counties may establish reasonable regulations to ensure that use of county easements does not interfere with public travel on county section line roads. An application for a use permit to allow the county to learn the particular details of an intended project would be a reasonable method of making this assessment. Additionally, permission to use the land for an intended project would need to be obtained from the landowner. Cited herein: K.S.A. 68-544.

10) **2002-30: Roads and Bridges--General Provisions--Laying Out, Altering or Vacating Roads; Prescribed Width of County Roads.**

Synopsis: A board of county commissioners has discretion to determine whether a county road is opened pursuant to K.S.A. 68-101 *et seq.* In laying out and opening a county road, a board of county commissioners must satisfy applicable statutory requirements and specifications, including the width requirements of K.S.A. 68-116. A road used primarily for access through a residential area may be declared a minimum maintenance road. Cited herein: K.S.A. 19-212; 68-101; K.S.A. 2001 Supp. 68-102; 68-102a; K.S.A. 68-104; 68-107; 68-116; 68-5,102. June 18, 2002.

NOTE: The opinion went on to state: “The statute authorizes a board of county commissioners to **increase** the prescribed width when necessary for public safety or proper construction of a road; however there is no authority for **decreasing** the prescribed width.”

11) **2006-15: Roads and Bridges—General Provisions—Laying Out and Opening Roads; Viewers; Notice of View; Duties of County Surveyor; Viewing, Surveying, Laying Out, Altering or Vacating Road.**

Synopsis: Neither K.S.A. 68-104 nor 68-106 requires a survey or the assistance of a surveyor prior to a county taking action to vacate a county road in every instance. However such a survey may be required if the actual location of the public road being

vacated is not known or is at issue, or may discretionarily be performed if a county wishes to provide abutting landowners or the general public with additional or actual notice as to the precise site of the vacated road. Cited herein: K.S.A. 19-212; 19-1420; K.S.A. Supp. 68-101, as amended by L. 2006, Chapter 76, § 1; K.S.A. 68-102; 68-102a; 68-104; 68-106; 68-116; K.S.A. 2005 Supp. 68-124. July 21, 2006.

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