



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2022-5

The Honorable Laura Austin-Thomas
Oklahoma District Attorney, District 9
Payne County Courthouse
606 South Husband Street, Room 111
Stillwater, Oklahoma 74074-4044

November 8, 2022

Dear District Attorney Austin-Thomas:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following questions:

1. Does Title 69, Oklahoma Statutes, Section 621 require that each adjoining county share equally in the cost of providing maintenance and construction of county highways on county lines?
2. Following the 2015 amendment of Section 621, do Title 69, Oklahoma Statutes, Sections 662 and 623 continue to apply when the boards of county commissioners of adjoining counties fail to agree on how to provide for the maintenance and construction of such county highways?

I.
BACKGROUND

When the Oklahoma Highway Code of 1968 (the “Code”) was enacted, the Legislature “recogniz[ed] that safe and efficient highway transportation is a matter of important interest to all the people of the state[.]” 69 O.S.2021, § 101(a). The Legislature further “determine[d] and declare[d] that an integrated system of roads and highways is essential to the general welfare of the State of Oklahoma.” *Id.* Along with acknowledging the necessity of establishing responsibilities for the location, design, construction, maintenance and operation of highways, the Code acknowledges the importance of coordination among the relevant state and local authorities. *Id.* § 101(h). Indeed, the Legislature deemed cooperation and coordination between the State Highway Commission, counties, and municipalities essential to the goal of establishing an integrated system of highway transportation throughout the state. *Id.*

The highways of Oklahoma are divided into the State Highway System and the county highway system. *Id.* § 501(A). County highways consist of all public roads within a county, minus any roads designated as state highways by the State Transportation Commission, and minus any roads

under the jurisdiction of cities, towns, or other political subdivisions. *Id.* §§ 601(A), 601.2. The boards of county commissioners have exclusive jurisdiction over the designation, construction, and maintenance and repair of all county highways and bridges. *Id.* § 601(A).

II. DISCUSSION

In certain circumstances, a county highway may be located on a county boundary line, raising the question of the counties' respective statutory responsibility for constructing and maintaining that highway. You also ask about the impact of the 2015 amendment to Section 621 on Sections 622 and 623 of Title 69 of the Oklahoma Statutes.

A. Title 69, Oklahoma Statutes, Section 621 does not require that each adjoining county share equally in the cost of providing maintenance and construction of county highways on county lines.

You first ask whether Section 621 as amended requires each county maintaining a county line highway to share equally in the cost to maintain and construct such highway.

Prior to the enactment of House Bill 1148 in 2015, Section 621 provided:

All county highways on county lines in this state shall be maintained and constructed by the counties adjoining. It shall be the duty of the board of county commissioners of each of the counties between which such roads are located to divide the roads on such county line into two parts or sections as nearly as practicable, giving due consideration to the difference of cost of constructing and maintaining each section, agreeing between themselves that each county shall undertake the work of constructing and maintaining one of the two sections.

69 O.S.2011, § 621.

The text was amended to its current form in 2015 and now provides:

All county highways on county lines in this state shall be maintained and constructed by the counties adjoining. County commissioners of each of the counties or other jurisdictions between which such roads are located may enter into agreements to provide for said maintenance and construction.

69 O.S.2021, § 621.

Both the pre-2015 and the current version of Section 621 place responsibility on the adjoining counties for maintaining and constructing county highways on county lines. But the pre-2015 version placed particular duties upon the board of county commissioners that are not found in the current version. Namely, it required the board of county commissioners to divide the road on the county line into two parts, taking into account cost and the division of responsibilities between the counties. In contrast, the amended version of Section 621 authorizes the county commissioners to

enter into agreements for maintenance and construction of county line boundary roads, but it does not expressly require the division of the road into two parts with the associated consideration of cost and agreement on responsibility for the parts. In other words, the amended statute provides more flexibility to the county commissioners in figuring out how to handle the work of constructing and maintaining county highways on county lines.

The plain language of Section 621 contains no reference to sharing equally in the cost of providing maintenance and construction of the roads at issue. Moreover, the 2015 amendment struck the language that referred to dividing the road into parts and considering costs. The upshot is that Section 621 as amended contains a more generalized provision than the original. It authorizes agreements between the counties but does not require such agreements or specify the details of their content. So, while Section 621 requires adjoining counties to provide for the maintenance and construction of county highways on county lines, it neither requires nor prohibits equal cost-sharing between the counties in implementing such maintenance and construction.

Likewise, it is worth noting that the language of Title 69 Oklahoma Statutes Section 623 providing for an “equitable” division of roads, does not necessarily require equal cost sharing between adjoining counties. Whether a division of roads is equitable is a fact question, involving the determination of whether the relevant dealings between the counties are just. *See Teel v. Teel*, 1988 OK 151, ¶ 5, n.6, 766 P.2d 994, 997, n.6 (stating “[o]ur caselaw holds that *equitable* division does not necessarily mean *equal* division.”) (emphasis added) (citation omitted); *see also, Equitable*, BLACK’S LAW DICTIONARY, (11th ed. 2019) (defining “equitable” as “[j]ust; consistent with principles of justice and right.”).

B. Title 69, Oklahoma Statutes Sections 622 and 623, continue to apply, even following the 2015 amendment to Section 621.

As noted above, Section 621 was amended so that it no longer refers to an agreement or a division of roads. Interestingly, neither Section 622 nor Section 623 of the Code have been amended, so they still have the original language, which relates back to the agreement and division of roads of Section 621. This leads to your next question, whether there is a conflict between amended Section 621 and references in Sections 622 and 623 to *the agreement* of Section 621 and *the division* of county line roads.

The primary goal of statutory construction is to ascertain and give effect to the legislative intent and purpose as expressed by the statutory language. *Am. Airlines, Inc. v. State*, 2014 OK 95, ¶ 33, 341 P.3d 56, 64 (citation omitted). “[L]egislative intent will be ascertained from the whole act in light of its general purpose and objective considering relevant provisions together to give full force and effect to each.” *Id.* 2014 OK 95, ¶ 33, 341 P.3d 56, 64–65 (citation omitted). Statutes on the same subject matter are construed together as a harmonious whole giving effect to each provision. *Shepard v. Okla. Dep’t. of Corrs.*, 2015 OK 8, ¶ 15, 345 P.3d 377, 382 (citation omitted). Every provision of Oklahoma’s statutes is presumed to have a useful purpose and should be given effect. *Darnell v. Chrysler Corp.*, 1984 OK 57, ¶ 5, 687 P.2d 132, 134 (citation omitted).

Section 622 provides, in relevant part:

- (a) It shall be the duty of each board of county commissioners to maintain the section of each county line road assigned to it by the aforesaid agreement
- (b) Provided, that when the board of county commissioners of any county is notified by the Board of an adjoining county that an agreement relating to division of county line roads as provided in the preceding section is desired, the boards shall within thirty (30) days of such notice proceed with the division in the manner agreed upon between the respective boards.

69 O.S.2021, § 622.

And Section 623 provides:

Should the boards of county commissioners fail to agree upon an equitable division of such roads or upon the expense of maintenance and construction of such roads after the division has been made, the Director shall be authorized to settle such disputes, when called upon to do so by the board of county commissioners of either county, and his decision in such cases shall be final and binding upon both counties.

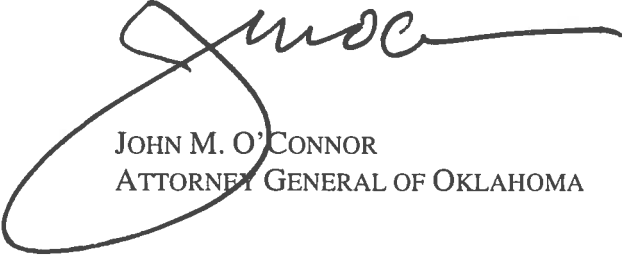
69 O.S.2021, § 623.

As noted above, the Legislature enacted the Code with the aim of providing an integrated system of roads. To achieve that goal, the Code expressly declared the importance of assistance and cooperation among the various entities responsible for roads throughout the state. With respect to particular responsibility for roads on county lines, “[t]he Legislature placed the onus of maintaining and constructing ‘[a]ll county highways on county lines in this state . . .’ on the adjoining counties.” *McWilliams v. Bd. of Cnty. Comm’rs*, 2011 OK 103, ¶ 17, 268 P.3d 79, 83 (quoting 69 O.S.2001, § 621). Even before Section 621 was amended, the court recognized the discretion afforded to counties in determining how to implement the required road maintenance. *See McWilliams*, 2011 OK 103, ¶ 17, 268 P.3d at 83 (stating “Section 622 *permits* the counties, by agreement, to predetermine which sections of the county-line road they will maintain and sets forth the manner of enforcement” (emphasis added) (citation omitted)).

Section 621, as amended, plainly authorizes the county commissioners to enter into agreements to provide for highway maintenance and construction. Accordingly, there is no conflict in continuing to interpret Section 622 as the court interpreted it prior to the amendment. That is, Section 622 continues to permit counties by agreement to predetermine which section of the county-line road each will maintain and to set forth the manner of enforcement. Similarly, Section 623 continues to provide a mechanism for settling disputes if the boards of county commissioners fail to reach agreement. Such an interpretation is consistent with the declared legislative intent that encourages cooperation and coordination among state and local authorities in establishing an integrated system of highway transportation throughout the state.

It is, therefore, the official Opinion of the Attorney General that:

- 1. Title 69, Oklahoma Statutes, Section 621 does not require that each adjoining county share equally in the cost of providing maintenance and construction of county highways on county lines; and**
- 2. Title 69, Oklahoma Statutes, Sections 622 and 623 continue to apply in circumstances where the boards of county commissioners of each county fail to agree on how to provide for the maintenance and construction of county highways on county lines, notwithstanding the 2015 amendment to Title 69, Oklahoma Statutes, Section 621.**


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