

68-115. Opening and repair of roads by county engineer or township trustee; drains and ditches; penalty for obstruction; compensation for road building material taken; appeal. (a) Except as provided by subsection (b), it shall be the duty of each and every county engineer to open or cause to be opened all state and county roads and of each and every township trustee to open or cause to be opened all mail routes and township roads which have been or may hereafter be laid out or established through any part of the respective county or township. Notice of such action shall be given to the owner or owners, or their agent or agents, if residing in the county, or, if such owner is incapacitated, to the guardian of such person, if a resident of the county, through whose inclosed or cultivated lands such road is laid out or established. Such notice shall direct such property owners to open such road through their lands within 90 days after service of such notice. If the person or persons so notified do not open such road within the time stated in such notice, it shall be lawful and it is hereby made the duty of such county engineer on state and county roads and of such trustee on township roads and mail route roads to respectively enter upon such property and open such roads. If such notice is given between the March 1, and October 1, the notice shall designate the next following January 1, as the time of opening such road. And the county engineer or township trustee respectively shall keep the same in repair, and remove or cause to be removed all obstructions that may be found therein. The township trustee and the county engineer are hereby authorized to enter upon any land near or adjoining such public road, to dig and carry away any gravel, sand, stone, clay, gypsum or any other road-building material and to purchase any timber which may be necessary to improve or repair the road, and to enter upon any land adjoining or lying near such road, to make such drains or ditches through the same as the county engineer or township trustee deems necessary for the benefit of the roads, doing as little damage to the lands as the nature of the case and the public good will permit. The drains and ditches thus made shall be kept open if necessary by the township trustee or county engineer and shall not be obstructed by the owner or occupants of the land or by any other person, under the penalty of being fined not exceeding \$10 for each offense.

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

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

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

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

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