



GENTNER DRUMMOND
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION
2026-12

The Honorable Bryan Logan
Oklahoma State Senate, District 8
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September 8, 2026

Dear Senator Logan:

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

When a private entity plans an energy development project within a county, can the county compel the private entity to enter into a road use agreement that requires the private entity to improve and/or repair county roads used to access the project?

I.
SUMMARY

Generally speaking, counties lack the authority to impose this type of road use regulation. By law, Oklahoma counties may exercise only those powers granted specifically by statute, or those implied by or incidental to a specific grant of authority. To be sure, counties have been granted specific authority over certain aspects of county roads. These include “exclusive jurisdiction” over construction and maintenance, and limited authority to restrict road use in response to an immediate threat of serious harm or destruction from road deterioration or climatic conditions. Additionally, counties have specific authority to enact reasonable regulations concerning road use or traffic incidental to oil and gas operations. However, none of these specific grants of authority, nor any implied or incidental authority, broadly empowers a county to impose upon private parties the type of road use agreement described herein.¹

¹ That said, counties have the explicit authority to enter into contracts. 19 O.S.2021, § 1. So, if an operator voluntarily consents to a road use agreement and the other elements of a contract are satisfied, the contract is valid. See 15 O.S.2021, § 2 (listing the statutory elements of a valid contract).

II. BACKGROUND

Oil and gas production has been integral to the Oklahoma economy for over a century. *See generally* Kenny A. Franks, *Petroleum Industry*, THE ENCYCLOPEDIA OF OKLAHOMA HISTORY AND CULTURE, <https://www.okhistory.org/publications/enc/entry?entry=PE023> (Jan. 15, 2010). More recently, the state has seen increased energy development in the form of wind and solar farms. *See* State of Oklahoma, *Renewable Energy*, <https://ee.ok.gov/resource/renewable-energy/> (last visited Sept. 4, 2026). To build and maintain these facilities, the operators utilize large trucks and transport heavy equipment over state and county roads. Predictably, this heavy usage negatively impacts the roads' quality and longevity.

To mitigate the burden of increased maintenance costs, some Oklahoma counties have demanded that project operators enter into road use agreements ("Agreements"). While specific terms of the Agreements vary by county, they generally require, among other things, (1) the operator to identify and document the pre-project condition of all county roads used to access the project; (2) county officials to determine whether such roads are suitable for heavy and/or oversized loads; (3) for any roads deemed unsuitable, the operator's commitment to improve such roads at its own cost before the project begins, or find alternate routes to the project site; and (4) the operator to prepay estimated repair costs for potential road damage.

III. DISCUSSION

You have asked whether a county can require the Agreements described above. While your question focuses specifically on the Agreements and their enforceability, the Agreements are, at their core, simply a form of road use regulation. Therefore, a county seeking to compel a private party to submit to the Agreements' terms must identify some specific grant of authority allowing a county to impose such restrictions.² The Agreements provided to this office cite two provisions of the Oklahoma statutes: title 69, section 601 (part of the Oklahoma Highway Code) and title 47, section 14-113 (regarding weight limits on county roads). After a brief discussion of general county authority, this opinion analyzes each of these provisions, then turns to a separate provision related to county regulatory authority over road use that is specific to oil and gas operations.

In short, this opinion concludes that while counties have some authority to regulate the use of county roads by heavy trucks or other vehicles, they cannot use that authority to impose the restrictions embodied in the Agreements.

A. Under Oklahoma law, a county may act only pursuant to a specific grant of statutory authority.

Counties are "involuntary, subordinate political subdivision[s] of the state...ha[ving] no inherent powers[.]" *Herndon v. Anderson*, 1933 OK 490, ¶ 16, 25 P.2d 326, 329. Acting through a board

² And to be clear, such restrictions are not valid unless formally adopted by the board of county commissioners in a properly noticed meeting that is open to the public. *E.g.*, *Bd. of Comm'rs of Garfield Cnty. v. Anderson*, 1934 OK 6, ¶ 0, 29 P.2d 75, 75.

of county commissioners, counties “derive their powers and authority wholly from the statutes, and acts performed by them must be done pursuant to authority granted by valid legislative action.” *Tulsa Exposition & Fair Corp. v. Bd. of Cnty. Comm’rs*, 1970 OK 67, ¶ 27, 468 P.2d 501, 508. Stated differently, a county may act only if it can point to (1) statutory authority “granted in express words,” or (2) unstated authority that is “necessarily or fairly implied or incidental to the powers expressly granted.” *Shipp v. S.E. Okla. Indus. Auth.*, 1972 OK 98, ¶ 15, 498 P.2d 1395, 1398. Applying this framework to your question, a county seeking to regulate the use of county roads as described in the Agreements must have either express statutory authority to do so or, alternatively, authority that is necessarily or fairly implied by, or incidental to, an express grant.

B. The Oklahoma Highway Code empowers counties to construct, maintain, and repair county roads, but not to regulate their use.

When it enacted the Oklahoma Highway Code of 1968 (“Highway Code”), the Legislature declared that “[i]nadequate roads and streets obstruct the free flow of traffic; result in undue cost of motor vehicle operation; endanger the health and safety of the citizens of the state; depreciate property values; and impede generally economic and social progress of the state.” 69 O.S.2021, § 101(c). The Highway Code divides responsibility for construction and maintenance of Oklahoma’s public roads³ between the State and its political subdivisions: the Department of Transportation (“ODOT”) is responsible for state roads, while counties are responsible for county roads. *See id.* § 101(e), (g); *see also* 2008 OK AG 9, ¶ 8, 2001 OK AG 41, ¶ 1. The Legislature intended the Highway Code “to declare, in general terms, the powers and duties” of each body, “leaving specific details to be determined by reasonable rules, regulations and policies” enacted at the state and county level. 69 O.S.2021, § 101(f)–(g). Accordingly, the Legislature has empowered counties to enact “reasonable rules, regulations and policies” to carry out its duties under the Highway Code.

The Highway Code grants to counties “exclusive jurisdiction over the designation, construction and maintenance and repair” of county roads and bridges. 69 O.S.2021, § 601(A).⁴ By granting “exclusive jurisdiction,” the Highway Code allows counties substantial discretion to determine how best to carry out these duties. *See Davis v. Sch. Dist. No. D-14, LeFlore Cnty.*, 1981 OK 24, ¶ 6, 625 P.2d 630, 633 (“This Court has stated it will generally not interfere with [a county’s] jurisdiction over county roads set forth in the Highway Code.” (citing *Oldfield v. Donelson*, 1977 OK 104, 565 P.2d 37)).

³ The Highway Code generally uses the terms “roads” and “highways” interchangeably, at least with respect to county roads. *See* 2011 OK AG 23, ¶ 3. For a broader discussion of what is considered a county public road, *see* 2003 OK AG 10.

⁴ *See also* 69 O.S.2021, § 654 (directing each county to designate its “county primary road system” and to consider, in constructing and maintaining the county primary system, traffic volume, industrial and marketing centers, and connections with other roads), 19 O.S.2021, § 1230 (permitting county commissioners to “establish and change the grade of any road, street, avenue, lane, alley, or other public place, and to permanently improve the same by grading, paving, constructing, macadamizing, chatting or graveling, curbing, guttering, draining and otherwise improving the same”).

Nevertheless, this authority is not so broad as to permit counties to impose limitations on private actors' use of county roads in the manner described in the Agreements.⁵ Under the Highway Code, counties are responsible for repair and maintenance of county roads. The common definition of "maintenance" is "the work needed to keep a road, building, machine, etc. in good condition." *Maintenance*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/maintenance> (last visited Sept. 4, 2026).⁶ It does not include restricting road use to prevent or minimize damage in the first place. At least one court has reached the same commonsense conclusion. *See Webster v. Frawley*, 55 N.W.2d 523, 524 (Wisc. 1952) (concluding that statutory term "maintaining highways" refers to "activities relating to the actual physical maintenance of highways and not to activities which only remotely and indirectly affect highway maintenance, such as the policing of weight of trucks"). Put simply, while restricting certain vehicle traffic may protect roads against wear-and-tear before it occurs, it is not commonly understood to be road maintenance. As a result, the specific authority granted to counties by the Highway Code does not include the ability to restrict road use.

Likewise, the power to restrict the use of county roads is not implied by or incidental to counties' express authority in the Highway Code. To be sure, limiting truck traffic on certain roads—and guaranteeing an up-front pool of funding for repairs and improvements to such roads—may lessen a county's maintenance burden. But it is not implied by or incidental to a county's duty to maintain its roads.⁷ This is further evidenced by the Legislature having specifically and independently addressed the regulation of vehicle size and weight on both state *and* county roads in Oklahoma. As explained in the next section, the Legislature chose to leave that regulatory authority almost exclusively to the State. It would be odd to conclude that counties have implicit authority under the Highway Code to regulate what the Legislature elsewhere designated as a near-exclusive sphere of State regulation.

C. Counties' limited authority to set weight limits on county roads does not permit them to require road use agreements.

As referenced above, the Legislature has enacted a comprehensive state-level regulatory scheme to limit vehicle weight, size, and loads on Oklahoma's public roads. *See* 47 O.S.2021 & Supp.2026, §§ 14-101–14-126. The limits are set by statute, and vehicles under these limits may pass freely throughout the state. *See* 47 O.S.2021, § 14-101(A); *see also id.* §§ 14-103 (vehicle

⁵ Notably, there is a long-recognized right of private persons or entities to use public roads. As stated by the Oklahoma Supreme Court, "a public road, as distinguished from a private road is one which is open to the travel of the public, and...it is the right to travel upon the road by all the world, and not the exercise of the right which makes it a public highway." *Oldfield*, 1977 OK 104, ¶ 8 565 P.2d at 40 (citing *St. Louis & S.F. Ry. Co. v. Smith*, 1913 OK 752, 137 P. 714); *see also Ex parte Duncan*, 1937 OK 155, ¶ 5, 65 P.2d 1015, 1017 ("The public has the absolute right to the free use of the streets," meaning "the right to use the street to convey one's self or property from one place to another.").

⁶ The term "maintenance" is not defined in the Highway Code or another relevant provision of the Oklahoma Statutes. It is therefore "to be understood in [its] ordinary sense[.]" 25 O.S.2021, § 1. That said, the legal definition of "maintenance" is similar: "The care and work put into property to keep it operating and productive; general care and upkeep." *Maintenance*, BLACK'S LAW DICTIONARY (12th ed. 2024).

⁷ Indeed, several funding sources are available to counties for road maintenance. *See, e.g.*, 69 O.S.2021, § 507 (County Improvements for Roads and Bridges Revolving Fund), *id.* § 1503 (County Highway Fund).

size limits), 14-105 (vehicle load regulations), and 14-109 (vehicle weight limits). Those who wish to operate vehicles exceeding the statutory limits must obtain a permit from ODOT. *Id.* §§ 14-103(B), 14-109(D); OKLA. ADMIN. CODE § 730:50 (ODOT permitting requirements); *see also* 1992 OK AG 12 (describing connection between ODOT permitting and receipt of federal highway funding). Importantly, the Legislature also provided that “**local authorities shall have no power or authority** to alter the [statutory size and weight] limitations **except as express authority may be granted in this chapter.**” 47 O.S.2021, § 14-101(A) (emphasis added); *see also id.* § 15-101.

These provisions of title 47 strictly limit county authority to regulate the size and weight of vehicles traveling on county roads. The sole exception relevant here is found in section 14-113, which permits a county to impose vehicle weight restrictions—or to prohibit vehicles altogether—on a county highway when, “by reason of deterioration, rain, snow or other climatic conditions [the highway] will be seriously damaged or destroyed” in the absence of such measures. 47 O.S.2021, § 14-113. A county must post signs on the highway and notify the Department of Public Safety before any such restrictions take effect. *Id.* The express purpose of section 14-113 is to give local authorities “an opportunity to prevent or minimize an **immediate threat** of serious harm or destruction to any highway...under their jurisdiction due to rain, snow or other climatic conditions.” *Id.*⁸ (emphasis added). Section 14-113 does **not** grant local authorities “the right to issue permits designed to regulate the use of overweight vehicles upon highways subject to their jurisdiction, and the issuance of such permits is expressly prohibited.” *Id.*

Read together, the relevant provisions of title 47 give the State nearly all authority over vehicle size and weight limits. The only carve-out for county regulation is limited to circumstances where a more restrictive limit is necessary to prevent an “immediate threat of serious harm or destruction” due to deterioration or climatic conditions. But even in that limited situation, a county cannot “issue permits designed to regulate the use of overweight vehicles” on county roads. So, where a county imposes more restrictive weight limits, those limits apply to everyone without exception. By contrast, the Agreements serve as *de facto* permits, under which the county allows only those operators who agree to their terms to exceed posted weight limits. The regulatory framework in title 47 sets the weight limits on Oklahoma roads, and the regulation and permitting of vehicles exceeding these limits are reserved to ODOT. The limited exception in section 14-113 does not authorize counties to enact their own restrictions by using the Agreements. *Accord* 2023 OK AG 7, ¶ 6 (noting that, under preemption principles, local regulation is invalid where repugnant to or inconsistent with state law).

As a final point, had the Legislature intended to give counties greater authority to regulate vehicle size or weight with respect to local energy development projects, it has shown that it knows how to do so. For example, the Oklahoma Hazardous Waste Management Act requires, as part of the permitting process for a hazardous waste facility, a determination from county commissioners that traffic to and from the facility would not damage county roads, as contemplated in title 47, section 14-113. *See* 27A O.S.2021, § 2-7-115. If commissioners determine that facility-related traffic would cause “substantial detriment” to county roads, the commissioners “shall determine reasonable measures necessary to upgrade” the road, and no permit will be issued until the county and permit applicant reach agreement. *Id.* If the Legislature intended to provide counties similar

⁸ Anyone violating the applicable weight limits is liable for resulting damage. *See* 47 O.S.2021, § 14-114.

authority with respect to other development projects, it could have done so. *See Broadway Clinic v. Liberty Mutual Ins. Co.*, 2006 OK 29, ¶ 16, 139 P.3d 873, 877 (“Where a word or phrase is absent from a statute, we must presume that its absence is intentional.”).

D. Counties may enact reasonable restrictions on road use related to oil and gas operations.

Finally, the story is slightly different with respect to oil and gas operations. In 2015, the Legislature placed nearly all regulation of oil and gas operations under the jurisdiction of the Oklahoma Corporation Commission (“OCC”). *See generally* 2015 OK AG 12, ¶¶ 1–6. At the same time, it left to counties and other political subdivisions the authority to “enact reasonable ordinances, rules and regulations concerning *road use, traffic*, noise and odors incidental to oil and gas operations within [their] boundaries,” so long as the regulations do not conflict with OCC-related statutes or rules. 52 O.S.2021, § 137.1 (emphasis added). This raises the question of whether a county’s particular road use regulation is “reasonable.” In 2015, this office provided general guidance for answering this question, but cautioned that a conclusive determination would depend on the terms of the regulation and the specific facts to which it applied. *See* 2015 OK AG 12, ¶¶ 23-26; *see also* 2012 OK AG 10, ¶¶ 16-20 (using similar approach for reasonableness of fees charged to utilities for road crossing permits). The same guidance applies here, and is incorporated by reference.

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

Generally, counties lack the authority to compel the operator of an energy development project to enter into a road use agreement that would require the operator to improve or repair county roads that are used for access to the project. As such, counties are subject to the following limitations by Oklahoma law:

- (a) The road use agreements described in this opinion function as road-use regulations. A county must have express statutory authority, or authority that is implied by or incidental to an express grant of authority, to impose any such regulation.**
- (b) The Oklahoma Highway Code grants counties the authority over construction, repair, and maintenance of county roads. This authority does not extend to regulating the use of county roads.**
- (c) Title 47 of the Oklahoma Statutes sets vehicle size and weight limits and assigns related permitting authority to ODOT. Section 14-113 grants counties limited authority to set weight limits on or restrict use of county roads to address “an immediate threat of serious harm or destruction...due to rain, snow or other climatic conditions.” It does not grant counties “the right to issue permits designed to regulate the use of overweight vehicles[.]”**

(d) Title 52, section 137.1 of the Oklahoma Statutes allows counties to “enact reasonable ordinances, rules and regulations concerning road use, traffic, noise and odors incidental to oil and gas operations within [their] boundaries.” Whether any particular road use regulation is reasonable and therefore permissible under section 137.1 turns on questions of fact, and cannot be answered in an Attorney General Opinion.



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