

**CONSTRUCTION SERVICES MEMORANDUM OF UNDERSTANDING  
BY AND BETWEEN  
BOARD OF COUNTY COMMISSIONERS OF MUSKOGEE COUNTY, OKLAHOMA  
AND  
HILLDALE PUBLIC SCHOOLS**

**Section 1. Purpose and Scope**

The purpose of this **Memorandum of Understanding** (the "MOU") is to foster cooperation and coordinate between the **Board of County Commissioners of Muskogee County** (the "County") and the **Hilldale Public Schools** (the "School"). The County and the School agree to cooperate in the improvement of a **public road along the 300 and 500 Block of Smith Ferry Road in Muskogee County, Oklahoma** (the "Project").

**Section 2. Provisions**

The County agrees to manage the construction of the Project without fee, inclusion the provision of required labor without cost. The County will build the Project to a specified budget as derived from the plans and specifications developed by both the County and the School. The School agrees to be responsible for all costs included but not limited to financing, permits, hard construction cost, design fees and insurance associated with the Project. Without being bound by the same, the parties anticipate the School's total funding will not exceed **\$278,516.00** for use on the Project.

The planning of the Project will commence at the signing of this agreement. Without being bound by the same, the parties anticipate the Project will be completed by approximately **one month** from the time construction commences in accordance with the plans and specifications developed by both the County and the School.

**Section 3. Additional Provisions**

This agreement is an internal governmental agreement and is not intended to confer any right upon any private person or party. Nothing in this agreement shall be interpreted as limiting, superseding or otherwise affecting either the County or the School's normal operations or decisions in carrying out its statutory or regulatory duties. This agreement does not limit or restrict the parties from participating in similar activities or arrangement with other entities. Should disagreements arise on the interpretation of the provisions of this agreement which cannot be resolved at the operating level, the areas of disagreement shall be stated in writing to each party and presented to the other party for consideration. If agreement is not reached within thirty (30) days, the parties shall forward the written presentation of disagreement to respective higher officials for appropriate resolution.

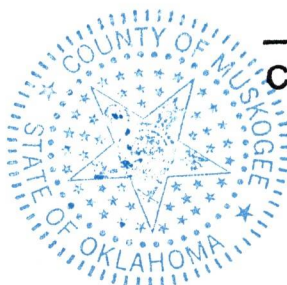
IT WITNESSS WHEREOF, the parties hereto, each acting under due and proper authority, have caused this agreement to be executed.

**BOARD OF COUNTY COMMISSIONERS OF MUSKOGEE COUNTY**

**HILLDALE PUBLIC SCHOOLS**

\_\_\_\_\_  
Authorized Official

\_\_\_\_\_  
Authorized Official



\_\_\_\_\_ day of May 2023  
 Chairman [Signature]  
 Member [Signature]  
 Member [Signature]  
 Attest [Signature]  
 County Clerk



**KEN DOKE, COMMISSIONER  
 MUSKOGEE COUNTY DISTRICT #1  
 3000 NORTH STREET, MUSKOGEE, OKLAHOMA 74403  
 918-682-4511 - OFFICE**

**PROJECT PROPOSAL**

4-13-2023

Hilldale Public Schools Access Road Project

Project Location: Smith Ferry Road north toward Bus Parking Lot

Scope of Work:

Saw cut asphalt at remaining road sections; Demolition of existing asphalt road; grade and compact sub-base; repair & reinforce soft spots, as required; install and compact aggregate base; install #4 reinforcing bar and tie sections; pour in place 4000 psi concrete base; install speed humps (owner select locations); center stripe road with double lines.

Road Width: 28'

Road Length: 1100' +/-

To include concrete pad at dumpster location

**Project Total: \$278,516.00**

**Projected project completion timeline: 30 days**

**Project will utilize County 6-month bid costs for material and labor**

Sincerely,

**Ken Doke, Commissioner  
 Muskogee County – District 1**

8<sup>th</sup> day of May 2023  
 Chairman [Signature]  
 Member [Signature]  
 Member [Signature]  
 Attest [Signature]  
 County Clerk







**OFFICE of GENERAL COUNSEL**  
*Muskogee County*

**John Tyler Hammons**  
*General Counsel*

330 N 4<sup>th</sup> Street  
Muskogee, OK 74401  
918-683-0309

**OPINION OF THE GENERAL COUNSEL**  
**Opinion No. 2023-08**

**QUESTION BY:** Kenny Payne, County Commissioner – District 3

**DATE:** May 4, 2023

**SUBJECT:** County Maintenance of Non-County Roads

**INTRODUCTION**

This office has received your request for an official opinion from the General Counsel in which you ask, in effect, the following question:

- 1. May the County lawfully enter into an agreement with a public school district requiring the expenditure of county funds to assist in the building and/or repairing of a road belonging to a public school district?*
- 2. If the answer to Question 1 is in the affirmative, is it relevant if all or a part of such road is located within a municipality with a population in excess of 15,000 residents?*

**SHORT ANSWER**

Yes. The County may partner with a public school district to improve a road belonging to the public school district. The population of the municipality in which such a road is located is irrelevant to the ability of the County to partner with the public school district.

**DISCUSSION**

Oklahoma state law provides general authority for counties and public school districts to enter into agreements with each other for their mutual benefit. Under the provisions of the Interlocal Cooperation Act, 74 OS § 1001 *et seq.*, (the “Interlocal Act”), the state’s political subdivisions are allowed to “make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.” 74 OS § 1001. To achieve this end, the public agencies involved may either (A) entered into an interlocal agreement under Section 1004 of the Interlocal Act or (B) enter into a contract for government services under Section 1008 of the Interlocal Act. As the Interlocal Act does not limit the type of arrangements public agencies can enter into, the

Interlocal Act certainly allows the County to enter into agreements concerning roads under the control of a public school district.

It must be noted, however, that the Interlocal Act is not an independent source of authority. Instead, it is merely a procedural tool for exercising the substantive authorities elsewhere granted to public agencies. Accordingly, for the County to resort to the Interlocal Act to cooperate with a public school district on a project, substantive authority to do so must be found. When conducting this inquiry, it must be remembered that counties “have no inherent power or authority, but possess, and can exercise, only those powers granted in express words or necessarily or fairly implied or incidental to the powers expressly granted.” Shipp v. Se. Oklahoma Indus. Auth., 1972 OK 98, ¶ 15, 498 P.2d 1395, 1398. Any action by a county “must be done pursuant to authority granted by [the Legislature].” Bd. of Cnty. Comm'rs of Oklahoma Cnty. v. Oklahoma City, 1971 OK 58, 484 P.2d 882, 884

To best answer your inquiry, this Office will address the second question first as it lays out the statutory framework surrounding your first. In the context of the public roads, the Legislature has defined in explicit detail the role of the County. The Oklahoma Highway Code of 1968, 69 OS § 101 *et seq.*, (the “Code”) divides responsibility for the maintenance of the public roads in this state between the state Department of Transportation, the various counties of this state, and the various municipalities of this state. Although some overlap exists, the three levels of government are each individually responsible for the roads within their respective jurisdiction. In the case of the county, the county has “exclusive” jurisdiction over the county highway system, that is, all public roads within the county except those designated as a state highway. 69 OS 601(A). In the case of municipalities, the same possess a similar non-delegable duty to maintain the streets within their municipal limits in a reasonably safe condition for travel. Bannister v. Farmers Alliance Mut. Ins. Co., 1981 OK 67, 630 P.2d 1279. *See also* 11 OS § 36-101 (municipalities hold title to public roads for the benefit of the public).

As your question identifies, in general, jurisdiction over a particular road belongs to a single agency (either state, county, or municipal) and, except where statute provides otherwise, never the twain shall meet. This Office is aware of two such exceptions which are germane to your question: Section 112 roads and Section 113 roads. For Section 112 roads, the County may enter into agreements with municipalities whereby the County “participat[es]... in the costs of any improvements on the streets which are in the limits of the municipality.” 11 OS § 36-112(C). Crucially, however, the street at issue must be a part of the county highway system, that is, it must be “a continuation of or a connection link in” the county highway system. 69 OS § 603. Further, in the case of Section 112 roads, any funds to be paid by the County are “due and payable **upon completion** of the project.” 11 OS § 36-112(C) (emphasis added).

Alternatively, the County can make improvements to a municipality’s Section 113 roads. Whereas Section 112 roads must be a part of the county highway system, Section 113 roads need not be as Section 113 roads may be “any of the streets of a municipality.” 11 OS § 36-113. Rather, the County’s involvement with such Section 113 roads is instead based upon the population of the municipality concerned. Section 113 identifies three categories of municipalities with different limitations on the County’s ability to participate in funding based thereupon:



- Category 113-A Roads – in the case of roads within a municipality with a population of less than five thousand (5,000), the County can “construct, improve, repair or maintain *any of the streets*” under the jurisdiction of a municipality. 11 OS § 36-113(B) (emphasis added).
- Category 113-B Roads – in the case of roads within a municipality with a population greater than five thousand (5,000) but less than fifteen thousand (15,000), the County may engage in road projects only if the municipality has enacted a sales tax “earmarked to construct, improve, repair, or maintain” the streets under the municipality’s jurisdiction. 11 OS § 36-113(C).
- Category 113-C Roads – in the case of a municipality with a population greater than fifteen thousand (15,000), the County has not power to improve any road under the jurisdiction of a municipality unless the County itself has a population in excess of one hundred fifty thousand (150,000). 11 OS §§ 36-113(C); (D).

As the above makes clear, in the case of Section 113 roads, the population of the municipality at issue is a crucial inquiry. This is confirmed by 19 OS § 339 which details the general powers of the County. Such general powers including legislative authorization to “utilize county-owned equipment, labor and supplies... on property owned by... municipalities” but only in accordance with Section 113’s commands. 19 OS § 339(A)(18). As neither Section 339 nor Section 113 permit a County to work on roads within a municipality with a population in excess of fifteen thousand (15,000) except in situations not relevant to your inquiry, the County is prohibited from spending county funds to construct, repair, maintain, or improve any such road regardless of the source of funding. In such an instance, the County may not rely upon Section 113 to authorize such work and, instead, is limited to the requirements of Section 112 alone. Whether any particular street qualifies as a Section 112 road or a Section 113 road is a question of fact, not of law, which will vary from case to case and, as such, cannot be answered in an official opinion of the General Counsel.

With this framework in mind, this Office now returns to your first question: can the County expend county funds to improve a road belonging to a public school district. As alluded to above, the general powers of the County permit it to use county equipment and labor to improve the property of owned by “public schools.” 19 OS § 339(A)(18). Confirming this point is the ability of the County to “work with... public school district properties in an effort to minimize cost to such entity.” 19 OS § 339(A)(25). Taken together, these provisions unquestionably permit the County to improve public school district property under Section 339, whether the same be classified as road or otherwise. The first question is answered in the affirmative.

As to your second question, the issue as to whether the population of the municipality in which the public school district’s property is located is relevant or not is governed by the text of Section 339. “[T]his Office will always give effect to the enactments of the Legislature as written as this Office will always presume the Legislature expressed with it meant and meant what it expressed.” *General Counsel Opinion No. 2023-03* (January 25, 2023). When seeking to determine the intent of the Legislature, this Office employs the maxim *expressio unius est exclusio alterius* – “the mention of one thing in a statute impliedly excludes another thing.” *Morgan v. State Farm Mut.*

*Auto. Ins. Co.*, 2021 OK 27, ¶ 28, 488 P.3d 743, 750. Because Section 339 expressly subjugates partnerships with municipalities – and only municipalities – to a population qualification, the clear intent is to exclude partnerships with other entities, such a public school district, from the same. As the ability of the Legislature to place restrictions on the County’s powers is without doubt, the Legislature could subject the County’s partnerships with public school districts to a population qualification – or any other restriction – as the Legislature, in its wisdom, sees fit. However, Section 339 has not expressly done so. “[W]here there is authority to speak, legislative silence may indicate its intent.” *Boyle v. ASAP Energy, Inc.*, 2017 OK 82, ¶ 31, 408 P.3d 183, 194. The Legislature’s silence concerning the population of the municipality in which a public school district’s property happens to be located in the face of such a restriction on municipalities clearly indicates the Legislature did not intent such a restriction to apply to public school districts. Accordingly, Section 339, by its own terms, does not require the population of the municipality in which the public school district’s property is located be considered for any partnership between the County and the public school district.

As a final matter, although this Office finds the County has unquestionable authority to improve property belonging to a public school district under Section 339, this Office advises caution when exercising the powers this Opinion now recognizes. The property at issue, be it classified as a road or otherwise, only qualifies under the analysis outlined hereinabove if title to the same is vested in the public school district. Property which is titled to a municipality, even if the same provides meaningful benefits to a public school district, is not property of the public school district. Instead, the same is municipal property and subject to the connectivity requirements of Section 112 or the population restrictions of Section 113. Whether any particular property qualifies as property of a public school district is a question of fact, not of law, which will vary from case to case and, as such, cannot be answered in an official opinion of the General Counsel.

### CONCLUSION

It is, therefore, the official opinion of the General Counsel that:

- 1. The County may lawfully enter into an agreement with a public school district to improve property under the public school district’s ownership whether such property be classified as a road or otherwise.**
- 2. The population of the municipality in which the public school district’s property happens to be located is irrelevant to the County’s ability to partner with a public school district to improve its property.**

Respectfully submitted,

  
**JOHN TYLER HAMMONS**  
General Counsel

CC: Board of County Commissioners  
County Clerk