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Dale W. Kirmer, P.E.
KDOT Bureau of Maintenance
Via email

Re: Utility use of KDOT right of way

Dale:

You asked about statutory authority relating to utility use of KDOT's rights of way.

K.S.A. 68-415 specifically allows utilities to be located "upon that part of the right of way of the state highways designated by the secretary of transportation" (i.e. the utility corridor). On the federal side, 23 U.S.C. §109(l) specifically allows utilities to be located on federal-aid highway right of way. The Federal Highway Administration ("FHWA") has gone a step further, declaring that "it is in the public interest" for utilities to be located on highway right of way, provided, of course, that the use of the right of way by a utility does not adversely affect the integrity or safety of the facility. (*See* 23 C.F.R. § 645.201 *et seq.*)

Both state and federal law recognize occupancy by utilities as a valid use of highway right of way. As you know, KDOT balances the rights of utilities to be located on state highway system right of way with the need to maintain and protect the integrity of the highway infrastructure through its Utility Accommodation Policy ("UAP") – which has been reviewed and approved by FHWA.

As utilities are statutorily permitted to occupy KDOT's right of way, then provided that such a utility complies with KDOT's UAP and obtains all necessary KDOT permits to be located on KDOT right of way, then I am unaware of any other restrictions or permits that could be required of such a utility.

Please let me know if you have any other questions or concerns.

Sincerely,

/s/ Joe McEvoy

Staff Attorney