

## Right of Public Utilities to Use Streets

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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## Right of Public Utilities to Use Streets

**Reference Number:** MTAS-716

It has been held that both public and private utilities can use municipal streets to install and maintain their infrastructure without the permission of, or payment to, the fee owner of the street. [See *Frazier v. East Tennessee Telephone Co.*, 90 S.W.620 (1900); *Johnson v. Chattanooga*, 191 S.W.2d 175 (1945); *Pack v. Southern Bell Telephone & Telegraph Company*, 319 S.W.2d 90 (1958).] The reason is exemplified in *Pack v. Southern Bell Telephone & Telegraph*, above, in which the Court, citing a multitude of cases from both Tennessee and other states, said

Since 1905 under the holding in *Frazier v. East Tennessee Tel. Co.*, 115 Tenn. 416, 90 S.W. 620, 3 L.R.A., N.S, 323, Tennessee has been committed to the view that the use of public rights-of-way by utilities for locating their facilities is a proper highway use subject to their principal purpose as travel and transportation of persons and property.... [At 792].

## Utility Relocation

**Reference Number:** MTAS-1474

Generally, while public utilities have the right to use municipal streets, that right is always subordinate to the principal purpose of the streets, which is obviously travel. For that reason, where street improvements necessitate it, utilities can be made to remove their facilities from the public streets. Tennessee follows the common law rule that in the absence of a statute providing otherwise, public utilities must remove their facilities at their own expense [*Pack v. Southern Bell Tel. & Tel. Co.*, 387 S.W.2d 789 (1965); *State v. Southern Bell Tel. & Tel. Co.*, 319 S.W.2d 90 (1958) (cert. denied by U.S. Supreme Court, *Memphis Transit Co v. Tennessee ex rel Leech*, 359 U.S. 1011 (1959)); *Bristol Tenn. Housing Authority v. Bristol Gas Corp.*, 407 S.W.2d 681 (1966); *Metropolitan Development and Housing Agency v. South Central Bell Telephone Co.*, 562 S.W.2d 438 (Tenn. App. 1978)].

T.C.A. §§ 54-5-804 *et seq.* provides for the state's payment of the costs of utility relocation with respect to "public highways." The definition of "public highway" within the meaning of that statute is a state highway forming part of the state highway or interstate system, and includes municipal streets that are part of those systems. T.C.A. § 54-5-802(5). Eligibility for utility relocation reimbursement under T.C.A. § 54-5-804 hinges on the utility's compliance with certain provisions of that statute and of T.C.A. § 54-5-854, the latter of which generally relates to the timely removal of the utility's infrastructure. In addition, reimbursement is conditioned upon the costs of that statute being funded and appropriated by the General Assembly.

T.C.A. § 54-22-101, also creates a presumptive right-of-way width under certain conditions "[w]herever the state proposes to improve a section of an existing two (2) lane undivided *public road* [Emphasis mine]. In addition, that statute provides that the state is responsible for the relocation of both above ground and underground utilities located entirely within that presumptive right of way. However, T.C.A. § 1-3-105 defines the terms used in the T.C.A. The word "Road" "includes public bridges and may be held equivalent to the words 'county way,' 'county road,' or 'state road' [Subsection (27)]. For that reason, that statute probably does not apply to municipal streets. Nothing in the context of T.C.A. § 54-22-101 indicates that "public road" includes a municipal street. Indeed, an unsuccessful attempt was made several years ago to amend that statute to add municipal streets to its coverage.

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