

Closing Municipal Streets

Dear Reader:

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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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Closing Municipal Streets

Reference Number: MTAS-814

Distinction Between Closing and Abandoning Streets

It is said in 11 McQuillin, *Municipal Corporations*, § 30.182, that the distinction between abandonment of a street, and the closing or vacation of a street is that the former is accomplished by inaction, and the latter by a prescribed procedure. Some cases suggest that a city can abandon a street without the benefit of an ordinance. It is said in *Wilkins v. Chicago St. L. & N.O.R., Co.*, 75 S.W. 1026 (1903), that

It is also true that the city has the right to abandon a street, that is, its easement of way, which it holds in trust for the public, or for the public interest; and that upon such abandonment the fee reverts to the adjoining proprietors, if they own to the center of the street...[At 465].

[Also see *State v. Taylor*, 64 S.W. 766 (1901), and *Knoxville v. Sprankle*, 9 Tenn. App. 218 (1928).]

But none of those cases clearly say that a municipality can “abandon” a street by inaction. In *West Meade Homeowners Association v. WPMC*, 778 S.W.2d 365 (1989), WPMC sought to use as an ingress and egress from its development a platted street, only a portion of which had been constructed, and which ended in a cul-de-sac. The homeowners association argued that the city had abandoned that portion of the platted street that had never been constructed. The court rejected that argument, pointing to certain evidence that the city had at least impliedly accepted that portion of the street. There is no hint in that case of how the court would have addressed the homeowners association abandonment argument had there been no such evidence.

The Tennessee courts appear to use the words “abandon,” “close,” and “vacation,” interchangeably with respect to streets. Most municipal charters prescribe a procedure for the passage of ordinances. There may be rare instances where a charter prescribes a special procedure for the passage of ordinances closing streets.

Municipal Discretion to Close Streets

Reference Number: MTAS-1470

Generally, property owners have little legal voice in the closing of city streets, and the courts will not interfere with municipal decisions in those areas absent fraud or a clear abuse of discretion. *Georgia v. Chattanooga*, 4 Tenn. App. 674 (1927); *Brimer v. Municipality of Jefferson City*, 216 S.W.2d 1 (1948); *Swafford v. City of Chattanooga*, 743 S.W.2d 174 (Tenn. Ct. App. 1987); *W. G. Wilkins v. Chicago, St. Louis & New Orleans Railroad Co.*, 110 Tenn. 423 (1903); *Sweetwater Valley Memorial Park v. City of Sweetwater*, 372 S.W.2d 168 (1963); *Cash & Carry Lumber Company, Inc. v. Olgjati*, 385 S.W.2d 115 (1964).

It is said in *Sweetwater Valley Memorial Park v. City of Sweetwater*, 372 S.W.2d 168 (1963), citing other cases, that

Authorities are abundant for the proposition that a municipal corporation being the state's representative, may ordinarily vacate, discontinue, or abandon its easement in a street or part thereof, whenever, by its proper board, found, to be unnecessary for public use [Citation omitted].

The rule appears to enjoy universal acceptance in this court as has been stated by this Court on numerous occasions [Citations omitted].

In the absence of an allegation of fraud or a manifest abuse of discretion, courts will not inquire into the motives of municipalities for vacating a public street [At 169].

The Court continued with a citation of 25 Am.Jur., *Highways*, Section 29, page 418:

The question of the necessity for closing a street or highway, as distinguished from the question of public purpose or use, belongs exclusively to the legislative department of the government. So, the province of the public authorities in whom the power to vacate is vested to determine when it shall be exercised, and their action in this regard will not be reviewed by the courts in the absence of fraud or a manifest abuse of discretion. The court cannot control or revise such discretion on the ground of inexpediency, injustice or impropriety... Ordinarily, the presumption is that a street or highway was

vacated in the interest of the public and that its vacation was necessary for public purposes, and the burden of showing to the contrary will be upon the persons objecting to the proceedings [At 169].

The same court built on those principles in *Cash & Carry Lumber Company, Inc. v. Olgiati*, 385 S.W.2d 115 (1964), in which the City of Chattanooga closed one block of a city street. The property upon which the street lay reverted to an abutting stove works, which was apparently using the street for storage and other purposes. Relying on *Sweetwater*, above, the Court upheld the chancellor's denial of *Cash & Carry's* petition for an injunction prohibiting the city from closing the street. *Cash & Carry* had not alleged facts sufficient to make out a case of fraud. "None of the officials here involved have been charged in the bill with acts showing falsity, concealment, deceit, or perversion of the truth" [At 117-18]. Nor did the facts show a manifest abuse of discretion. The fact that the property would revert to, and benefit, the abutting property owner, did not in and of itself show an abuse of discretion or fraud.

Turning to the issue of inconvenience suffered by *Cash & Carry* in the closing of the street, the Court declared that

To reach complainant's property, it is apparent that some convenience will be sacrificed. No longer will complainant have a direct access for a distance of two blocks to Main Street. Instead, travelers will be forced to go over one block east or west and then down, increasing the distance to Main Street at most one block. However, there is no allegation that *reasonable* egress and ingress will be destroyed [At 118] [Emphasis is mine].

Streets Should be Closed By Ordinance

Reference Number: MTAS-1471

In *Wilkey v. Cincinnati, New Orleans & Texas Pacific Railway Company*, 340 S.W.2d 256 (1960), the Rhea County Chancery Court permanently enjoined the railroad and the city from closing a railway crossing on a certain street, which was barricaded on both ends of the crossing. However, it is clear that the case would have gone the other way had the city closed the crossing by ordinance. The city had passed a *resolution* to close the crossing upon the completion by the state of an underpass several blocks away. After the underpass was completed, the *contractor* barricaded the crossing in accordance with its contract with the state for the construction of the underpass. The city's resolution and the contractor's barricade was not good enough, declared the Court.

...We cannot agree that the resolution in question obviates the need of an *ordinance* closing the crossing on West Second Avenue... It may well be, as both the State and the Railway company strongly insist, that it is necessary to close the crossing on West Second Avenue to promote the safety of the traveling public. If so, the responsibility for closing it remains with the local authorities [At 259].

In *Cash & Carry Lumber Company*, the Court distinguished *Wilkey*, explaining why the injunction against the closing of the railroad crossing in that case was an aberration.

Wilkey [citation omitted], cited by appellants for the proposition that no remedy at law exists is readily distinguishable and is not controlling. *In the Wilkey case, the municipal government had failed to close the grade crossing by ordinance*, and the Court of Appeals held that there had been no exercise of eminent domain, and that no damages would be recoverable; therefore, an injunction was the proper remedy.

In the instant case, the proper municipal authority has by ordinance abandoned the street in question. If complainant's property has been thereby taken, the remedy is at law with an action for compensation [At 118] [Citing *Sweetwater*] [Emphasis is mine].

Planning Commission Approval Required to Close Streets

Reference Number: MTAS-1472

T.C.A. § 13-4-104 provides that after the planning commission has adopted all or a part of the plan for the city,

...the widening, narrowing, relocation, vacation, change in the use, acceptance, acquisition, sale or lease of any street or public way, ground, place, property or structure shall be subject to similar

submission and approval [to the planning commission], and the failure to approve may be similarly overruled [by the municipal governing body].

Other Prerequisites for Closing Streets

Reference Number: MTAS-1473

Unless a statute or charter provides otherwise, no notice need be given property owners of a municipality's intention to close a street. *Sweetwater Valley Memorial Park, Inc. v. Sweetwater*, 372 S.W.2d 168 (1963). There is no state law prescribing any special notice or other special procedures precedent to the closing of municipal streets. T.C.A. § 54-10-201 contains notice and other procedures for the closing of county roads. Apparently at least one trial court has held that those procedures apply to the closing of municipal streets. Such a holding is clearly wrong. However, because of the potential problems street closings can have, municipalities are advised to give reasonable and well-publicized notice to abutting property owners and other interested citizens of their intent to close a street. A municipality considering closing a street should also determine whether its charter contains provisions governing the closing of streets.

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