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Ownership of Closed Streets

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The following document was created from the MTAS website (mtas.tennessee.edu). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

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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Unless a city owns a fee simple in the land upon which the street sits, it has no further legal interest in the street following its abandonment. In *State v. Taylor*, 64 S.W. 766 (1901), the City of Union City by ordinance and deed conveyed one of its streets to a business. In declaring the conveyance ultra vires and void, the Court declared that

It is obvious under our law, that the ordinance and deed in question were ineffective to pass any portion of Washington Avenue to the intended vendees; first, because the corporation did not own the fee in the street, and secondly, because the easement which it did own was not subject to sale and conveyance. The corporation had only the right to use this street for street purposes. That was the extent of the dedication and the board had no authority to exceed its limits. The platting of territory and sale of the lots by the original owner in the manner hereto recited vested the city as such, but not otherwise in the municipality, and at the same time passed to the respective lot purchasers the ultimate fee to the soil to the center of the streets on which they severally abutted [Citations omitted]… So, the corporation had only an easement in Washington Avenue, and that, from its nature, was incapable of alienation and passage to an individual. Hence, to repeat what has already been remarked, the ordinance and deed relied on by the defendant were inoperative as to the fee because the corporation did not own it, and as to the easement because it was not transferable [At 768].

Even though the conveyance was ultra vires and void, its effect "was, nevertheless, in legal contemplation, and, in fact, an abandonment of its easement in so much of Washington Avenue, and though through that abandonment the strip of ground in question ceased to be a part of the public street, and *by operation of law reverted to the owner of the ultimate fee*" [At 268].

It has been repeatedly said that, municipalities usually do not own the fee in land dedicated for streets. *Hamilton County v. Rape*, 47 S.W. 416 (1898); *Georgia v. Chattanooga*, 4 Tenn. App. 674 (1913); *State v. Taylor*, 74 S.W. 766 (1903). Generally, they have only easements in their streets, and abutting property owners are presumed to own the fee to the center line of the street. *Hamilton County v. Rape*, 47 S.W. 416 (1898); *Patton v. Chattanooga*, 65 S.W. 414 (1901). It is also said in *Rogers v. City of Knoxville*, 289 S.W.23d 868 (Tenn. 1955), that "[t]he generally accepted rule is that where a right of way is condemned [Emphasis is the Court's] it reverts upon nonuser to the owner of the fee…" [At 873]. *Smokey Mountain Railroad Co.*, above, did not distinguish between rights-of-way taken by eminent domain from other rights-of-way, citing *Rogers* for the proposition that "[w]here a right of way is abandoned, it generally reverts upon non-user to the owner of the fee" [At 913]. [Also see *State v. Taylor*, 74 S.W. 766 (1903), and *Wilkins v. Chicago, St. L. & N.O.R., Co.*, 75 S.W. 1026 (1903).]
