



Utilities Occupying Closed Streets

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.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,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

Table of Contents

Utilities Occupying Closed Streets.....	3
---	---

Utilities Occupying Closed Streets

Reference Number: MTAS-832

As far as can be determined, there is no statutory or case law in Tennessee, and little case law in other states, directly on the question whether a utility has the right to continue to occupy a street that has been vacated or closed. However, *Beadle v. Town of Crossville*, 7 S.W.2d 992 (1928), hints at the answer to the question in Tennessee. There the city closed First Street for the construction of a standpipe or reservoir for its waterworks.

Beadle argued that when the city closed First Street, the land automatically reverted to the abutting property owners, of which he was one, and that the city had no right to build such a facility on his property. The city had a right to close First Street, and the right to condemn the property to build a standpipe for its waterworks on that location, concluded the Court. The only remedy Beadle had, continued the Court, was a suit to recover damages for the taking of his land.

It is difficult to see why the remedy of a property owner as to a utility facility already in the ground when a street is closed would be any different than the remedy of a property owner as to a utility facility a city intends to place in the ground after the street is closed. In both cases the property having automatically reverted to the abutting or other actual owners, those owners would be entitled to payment for the taking of the land for utility purposes, in the latter situation for an inverse taking. It was also said in *Cash & Carry Lumber Co. v. Olgiate*, 385 S.W.2d 115 (1964), that

In the instant case, the proper municipality has by ordinance abandoned the street in question. If complainant's property has thereby been taken, the remedy is at law in an action for compensation [*Sweetwater Valley Mem. Park v. Sweetwater*, *supra*, 372 S.W.2d at 170] [At 118].

That language appears to cover a situation where a city closes or vacates a street and leaves any utility infrastructure in the ground.

The law in other jurisdictions supports the theory that when a city closes or vacates a street, it cannot attach a condition that entitles the utility infrastructure to remain in the ground unless the city condemns a utility easement. The case of *re City of Altoona*, 388 A.2d 313 (Pa. 1978), held that when the city passes an ordinance vacating a street, a utility easement in the ordinance was void. The Court reasoned that

When the public right to use Kenyon Road was validly terminated by the City of Altoona, the property reverted automatically and simultaneously to the abutting owners. [Citations omitted] The abutting owners are entitled to their full reversionary interest which the City may not dilute by imposing upon the dedication a burden not bargained for or contemplated; the dedication of Kenyon Road was for the purpose of affording the public a right of passage not to benefit utility companies or their customers. Although an easement for utilities in and along Kenyon Road may not have been incompatible with its use as a roadway and would not have interfered with the rights of the owners of the underlying fee, as long as the roadway was in use, [citation omitted], there is no reason to suppose that the easement for utilities would be consistent with the purposes for which the land could now be used by the abutting owners after the cessation of the dedicated use... In sum, we hold that when Altoona terminated the use for which the land was dedicated, it could not at the same time reserve the right to an ancillary use not stipulated for in the original dedication [Citations omitted] [At 316-17].

In accord are *Gable v. City of Cedar Rapids*, 129 N.W. 737 (Iowa 1911), *People ex rel. Greer v. City of Chicago*, 1154 Ill. App. 578 (Ill. 1910).

However, a city and a property owner abutting a street may be able to contract for the closure of a street in which the utility infrastructure would remain in the ground without compensation of the property owner by the city for the taking of the property. In *Knoxville Ice & Cold Storage Co. v. City of Knoxville*, 284 S.W.866 (1925), the Court upheld a contract under which provided for the city and a railroad to share the cost of the construction of a viaduct over the railroad, and the city to close a street. The Court noted the provisions in the city's charter authorizing it to open and vacate streets, and to enter into contracts, and reasoned that

The city can certainly make a valid contract for the improvement of a street or the laying of a sidewalk. With equal certainty for a valuable consideration the city council could contract for the opening of a street when a street would be for a public purpose. For a like reason a contract for the abolishment of a

street or a part thereof is valid when the contract is supported by valuable consideration and the abolishment is for a public purpose [At 153 Tenn. 536, 569].

The conditions under which such a contract would meet the “public purpose” test would undoubtedly depend upon all the facts in each case.

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

Source URL (retrieved on 01/23/2020 - 6:56am): <http://www.mtas.tennessee.edu/reference/utilities-occupying-closed-streets>



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE