

February 15, 2011

Dear City Recorder,

Your question is not necessarily easy to provide an opinion as to what happens when a street is abandoned by a city, and whether or not the city can abandon the street. I am attaching portions of two legal opinions that have addressed the issue previously. What I can tell you from my experience is that if there is more than one property owner with their lot frontage on the street, and their property is platted based on having access to that one street only, then the City may very well have a problem by creating an unbuildable lot, or a landlocked lot that has no access to it.

Generally speaking, the city can abandon a street if it is not being used by the public as a thoroughfare. What then happens is that the underlying property is given back to the adjacent property owners. If there is more than one lot adjacent to any street, the city should look carefully at the effect abandoning the street would have on those property owners in term of ingress and egress from their properties. If the property owners lose their ability for ingress/egress from the property, the city will definitely have an issue that could wind up in court. Whether or not these current streets would meet design standards now is irrelevant to the fact that they have been treated as public streets up until now. If the city is saying that these "streets" do not in fact serve as public streets, that they only serve as "driveways/lanes for a single property owner then it would not be difficult to abandon the right of way.

The following excerpts may be useful to the city in terms of what can happen in these situations:

"Let us assume here that after the state abandoned the road in question, the city also properly abandoned the street. Generally, that must be done by ordinance, and absent unusual circumstances the right of a city to close a street is very broad. [See Sweetwater Valley Memorial Park v. City of Sweetwater, 372 S.W.2d 168 (1963); Cash & Carry Lumber Company, Inc. v. Oligiati, 385 S.W.3d 115 (1964); Wilkey v. Cincinnati, New Orleans & Texas Pacific Railway Company, 340 S.W.2d 256 (1960).]

Unless a city owns the fee simple in the land upon which a city street sits (which is highly unlikely in most cases), 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 that 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 has 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 the sale of 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 pass to the respective lot purchasers the ultimate fee to the soil to the centerline of the street 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 170 Tenn. 462-464]

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 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 107 Tenn. 464-466]

It has been repeatedly said that municipalities usually do not own the fee in land dedicated for streets; generally, they have only an easement in their streets, and abutting property owners are presumed to own the fee to the centerline of the street (which presumption can be overcome by evidence of other ownership). [Hamilton County v. Rape, 47 S.W. 416 (1898); Patton v. City of Chattanooga, 65 S.W. 414 (1901); Georgia v. Chattanooga, 4 Tenn. App. 674 (1913); Rogers v. City of Knoxville, 289 S.W.2d 868 (1955)]

In all likelihood then, if the City abandoned the street which was formerly the part of the State Route in question, the property automatically reverted to its former owners, presumptively to the abutting property owners to the centerline of the street. At that point, the city owned no further interest in the property.”

“A highway which is lawfully vacated or abandoned ceases to be a highway and, insofar as the public has a mere easement of way, the title reverts to the owner of the fee discharged from the servitude. The public authority is not obligated any longer to keep it in repair, or liable for injuries resulting from its failure to do so. The same general proposition is also stated in 71 ALR 1206. That general proposition also appears to be the law in Tennessee, for in Thompson Anderson v. W.J. Turbeville, 46 Tenn. (6 Cold.) 150, the Tennessee Supreme Court, in dictum, said:

With respect to the closing of a public street, the municipal corporation representing the State, has the power to abandon the public use of it, and be exonerated from obligation to keep it in repair, and otherwise suitable for public use.

If that is so, it would seem that there is no obligation on the part of the public body to restore the property upon which lies the road to its original condition.

That conclusion is strongly supported in Fuller et al. v. City of Chattanooga, 118 S.W.2d 886 (1938). There the city condemned the Fullers' property for the widening of a street. The city also changed the grade of the street in the course of its widening, damaging the Fullers' remaining property. The Fullers sued to recover the amount of damages. They were not entitled to recover the damages held the Tennessee Supreme Court, because:

We think the facts of this case bring it within the well established rule in such cases that the condemnation of a right of way or a deed conveying a right of way cover by implication whatever is necessary to make the enjoyment of the land conveyed effectual for the particular purpose for which it is acquired by the condemnor or conveyance as the case may be. The principles underlying this rule have been applied in several cases in this State.”

The city would need to abandon the streets in question by passage of an ordinance, or ordinances, which vacate the right of way and return the underlying property to the adjoining property owners. If you need an example of such an ordinance, let me know and I will send you one.

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