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Creation of Municipal Streets

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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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Reference Number: MTAS-663

Broad Municipal Discretion

Generally, property owners have little legal voice in the location, establishment, construction, and abandonment 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. Olgiati*, 385 S.W.2d 115 (1964)].

It has also been held that municipalities have the discretion as to what forms of public travel are permissible within a right-of-way. In *Blackburn v. Dillon*, 225 S.W.2d 46 (Tenn. 1946), the width of the right-of-way easement was clearly 40 feet, but the city had the discretion within that easement to determine what forms of public travel were allowed (in this case a sidewalk).

Methods of Creation

Reference Number: MTAS-664

It is said in *Henry County v. Summers*, 547 S.W.2d 247, 250 (Tenn. App. 1976) that

Unless a passageway has been created a public way in some manner known to the law, such as by act of the public authorities, or the express dedication by the owner, or by an implied dedication by means of the use by the public and acceptance by them with the intention of the owner that the use become public, or by adverse user for a period of 20 years continuously creating a prescriptive right, it is not a public way [At 250].

There are apparently six “manners of creation” known to the law.

1. **County roads automatically become city streets upon the incorporation of the city or by annexation of territory into the city.** [See 64 C.J.S., *Municipal Corporations*, Section 1661; *Jordan v. City of Cleveland*, 255 S.W. 377 (1922).]

2. **Streets designated by the state as state highways, or constructed by the state or any political subdivision of the state, are city streets.**

T.C.A. Title 54, Chapter 5, gives the Tennessee Department of Transportation the authority to construct state highways, including interstate highways, through municipalities, or to designate existing city streets as part of the state highway system. It has the sole discretion over the selection of streets that become state highways. [Especially see T.C.A. §§ 54-5-201 *et seq*.]

In either case, state highways running through municipalities are simply municipal streets over which state traffic is routed, and the municipality retains its police powers over such streets. [See *Collier v. Baker*, 27 S.W.2d 1085 (1930); *Brimer v. Municipality of Jefferson City*, 216 S.W.2d 1 (1948); *Paris v. Paris-Henry County Utility District*, 340 S.W.2d 885 (1960)]. While a county or other political subdivision of the state can own easements for various purposes within a municipality, any street constructed by a county or other political subdivision of the state inside a municipality, or any county or other political subdivision property inside a municipality generally opened to public travel, is a municipal street [*Callahan v. Middleton*, 292 S.W.2d 501 (Tenn. App. 1954), *Rutherford County v. Murfreesboro*, 309 S.W.2d 778 (Tenn. 1957); *Thompson v. Memphis*, 66 S.W. 990 (Tenn. 1934); *Brimer v. Municipality of Jefferson City*, 216 S.W.2d 1 (Tenn. 1948)].

T.C.A. §§ 54-5-207–54-5-210 provide for the acquisition of land by a municipality (at the expense of the state) for the purpose of the development and construction of interstate connections. But T.C.A. § 55-5-210 provides that even where the municipality fails in that job, “nothing in §§ 54-5-207–210 shall be construed as otherwise changing the character or legal status of streets in any way and the distinctions heretofore made in this code between streets and highways are continued in full force and effect.”

3. **Formal dedication and acceptance.** This method contemplates a formal offer, and a public acceptance of, the dedication. [See *Smith v. Black*, 547 S.W.2d 947 (Tenn. App. 1977)]. It is also said in 10A McQuillin, *Municipal Corporations*, Section 33.30, that one of the ways that shows intent to dedicate land to public use is "recitals in a deed in which the rights of the public are recognized." For that reason, formal dedication and acceptance of streets includes their formal purchase.

A statutory method for the formal dedication and acceptance of subdivision streets is found in T.C.A. §§13-4-301 *et seq*. It is provided in T.C.A. § 13-4-104 that whenever the planning commission has adopted the plan of the municipality (or any part thereof)

- "[N]o street…or other public way…" shall be constructed or authorized until its location and extent have been approved by the planning commission; unless
- The governing body of the municipality overrides the disapproval of the planning commission by a vote of a majority of its entire membership.

Likewise, T.C.A. § 13-4-307 provides that once the subdivision platting jurisdiction of the municipal planning commission attaches, a municipality "shall not…accept, lay out, open, improve, grade, pave, or light any street, or lay or authorize water mains or sewers or connections to be laid in any street within the municipality, unless"

- The street has been accepted or opened as or has otherwise received the legal status of a public street prior to the attachment of the planning commission's subdivisions jurisdiction; or,
- The street corresponds in its location and lines with a street shown on a subdivision plat approved by the planning commission or with a street plat made and adopted by the commission; or
- The municipal governing body locates and constructs a street or accepts a street, provided that it first submits the ordinance or other measure for the location and construction, or acceptance of the street, to the planning commission for its approval, and if it is disapproved by the planning commission, receives the vote of a majority of the entire membership of the municipal governing body.

4. **Implied dedication and acceptance.** This conduct of the landowner and of the municipality is weighed to determine whether a street has been dedicated and accepted under this method. It is said in *Roger v. Sain*, 679 S.W.2d 450 (Tenn. App. 1984), that

It has long been established that private land can be implicitly dedicated to use as a public road. [Citation omitted.] When an implied dedication is claimed, the focus of the inquiry is whether the landowner intended to dedicate the land to a public use. [Citations omitted.] The proof on the issue of intent to dedicate may be *inferred from surrounding facts and circumstances, including the overt acts of the owner* [Citation omitted] [At 452-53] [Emphasis is mine].

Citing an earlier case that quoted from Elliot on Roads and Streets, Section 92, the Court continued

Among the factors which indicate an intent to dedicate are the landowner opens a road to public travel [Citations omitted.]; acquiescence in the use of the road as a public road, [Citations omitted.]; and the fact that the public has used the road for an extended period of time. [Citations omitted.] While dedication is not dependent on duration of the use, extended use is a circumstance tending to show an intent to dedicate. [Citations omitted.] *Finally,an intent to dedicate is inferable when the roadway is repaired and maintained by the public* [At 453].

It was also said in *Reeves v. Perkins*, 509 S.W.2d 233, (Tenn. App. 1973) that, "Dedication may arise from the failure of the owner to object to user by the public. A highway may be established in this manner" [At 234-35]. In that case a certain landowner erected a fence at both ends of a road. The county road commissioner argued that the road was a public road. Holding in favor of the road commissioner, the court pointed to proof from witnesses in the area and county highway department commissioners and employees that

…establishes the road has been in existence and used by anyone who wished to use it since the 1920s. The use included foot travel, horseback, wagon, automobile and pick-up trucks. No owner of the property ever fenced off either of the two ends of the road nor did any previous owner object to or restrict the use of the road. A former county highway commission and some county highway department employees testified that the county had graded and ditched the road several times since 1939. One witness traveled the road in a pick-up truck about two or three years prior to the suit.

The road was used by plaintiff Huber Patty while a Star Route mail carrier in 1926 because it was the better road from Sardis to Lexington [At 234-35].

The abutting landowner never objected to the use of the road during that period. Apparently there may also be a formal dedication and an implied acceptance of a street easement.

The approval and recording of a subdivision plat does not constitute acceptance of the subdivision streets, but probably does constitute formal dedication of the streets. *If the city fails to formally accept the dedication, its conduct in the use of the street may constitute implied acceptance*. [See *Smith v. Black*, 547 S.W.2d 947 (Tenn. App. 1977); *Hackett v. Smith County*, 807 S.W.2d 695 (Tenn. App. 1990); *West Meade Homeowners Association v. WPMC*, 788 S.W.2d 365 (Tenn. App. 1989).]

Some of the acts that indicate implied acceptance of the street on the part of the city include tolerance of common use by the public, construction and maintenance by city and other utilities of installations in the street, listing on an official street map, use of the street by school buses, law enforcement agencies, and absence of the street from the tax rolls and special assessments. [See *State ex. Rel. Matthews v. Metro. Gov't of Nashville*, 679 S.W.2d 946 (Tenn. 1984); *Hackett v. Smith County*, 807 S.W.2d 695 (Tenn. App. 1990); *West Meade Homeowners Association v. WPMC, Inc.*, 788 S.W.2d 365 (Tenn. App. 1989).]

In *State ex rel. Matthews v. Metro. Government of Nashville*, 679 S.W.2d 946 (Tenn. 1984), a bank obstructed Printers' Alley with garbage cans and dumpsters, and the owner of an abutting building asked for a writ of mandamus requiring the police to remove those obstructions, arguing that it was a public alley. The Tennessee Supreme Court upheld the issuance of the writ of mandamus by the trial court, reasoning that the alley had been accepted by the city. In this case little beyond public use and the city's utility location supported the Court's determination that the alley was a public alley.

Not surprisingly, there is little direct proof of the extent of public use of the alley in the years immediately following the offer of dedication in 1881. The alley has been used by pedestrians to go between Fourth Avenue and Printers' Alley for many years. The alley appears in atlases dated 1889, 1908, and 1928. Although not specifically labeled as a public alley on those atlases, it is shown in a manner, which is consistent with its status as a public alley. The reasonable inference to be drawn from the facts and circumstances above is that public use of the alley was significant in the early years following dedication. That public use constitutes a public acceptance of the offer of dedication. Our conclusion derives support from the proof relating to the use of the alley by the public and the treatment of the alley by the Metropolitan Government in subsequent years.

Pedestrians have continued to use the alley as a walkway. Although many of the pedestrians are from the J.C. Bradford Building, some are from the Ambrose Building and others are not associated with either building. Vehicles have made use of the alley to make deliveries and to park.

There is no proof in the record that the Metropolitan Government has done any maintenance work on the alley. However, the proof clearly establishes that in other respects the city has treated the alley as a public alley. In 1965, the city passed an ordinance adopting an "Official Street and Alley Acceptance and Maintenance Map" which shows the alley as Public Alley No. 17. In addition, no taxes have been assessed on the property. The Department of Public Works gave the Nashville Electric Service permission to locate a utility vault underneath the alley [At 949].

No specific time limit triggers an implied dedication. In *Nicely v. Nicely*, 232 S.W.2d 421 (Ct. App. 1949), an implied dedication arose from five years use, along with other circumstances, including road grading with public funds. In *Payton v. Richardson*, 356 S.W.2d 289 (Tenn. App. 1962), the Court declared that, "*The manner of its use is more material than the length of time the use has continued*" [At 291].

A landowner's grant to a small number or certain class of travelers of a right to use his land as a passageway generally will not constitute a grant of an implied dedication. It is said in 11A McQuillin, *Municipal Corporations*, Section 33.32, that

…If the user by the public does not exclude the owner's private rights, such user will ordinarily be regarded as merely permissive and a mere permissive use of property by third persons in connection with a private use of the property for the same purposes does not usually show an intent to dedicate. Thus, an intent to dedicate is not shown by the act of the owner of land in establishing a private way for his or her own convenience or for the convenience of his or her customers, even though the way is also used by the public generally without objection by the owner. Similarly, an intention to dedicate will not be inferred from the public's use of railroad company's land if that use is consistent with the public use for which the railroad company holds the property.

5. **Prescription.** A street easement arises by prescription when a person, including a government, uses another person's land as a street openly and notoriously under a claim of right for an uninterrupted period of 20 years. It is said in *Morgan County v. Goans*, 198 S.W. 69 (Tenn. 1917), that, "Twenty years' adverse possessor will establish a right-of-way either in the public or in private persons" [At 69]. The claim of right and acceptance of the street by the government can be shown by public maintenance of the street. [Also see *Callahan v. Town of Middleton*, 292 S.W.2d 501 (Tenn. Ct. App. 1954); *Morgan County v. Goans*, 138 Tenn. 381, 198 S.W. 69 (1917); *City of Knoxville v. Sprankle*, 9 Tenn. App. 218 (1928); *Lewisburg v. Emerson*, 5 Tenn. App. 127 (1927).]

In *Morgan County v. Goans*, 198 S.W. 69 (1917), a road ran from the main Wartburg Road to Ms. Goan's place through Duncan's land. There was evidence to show that the road had been in existence since 1884, and had been traveled by the public since that time as a matter of right. The county had never maintained the road, but its use by the public for more than 20 years was sufficient to create a prescriptive public right in the road.

6. **The laws of eminent domain, and other statutes.** Land can be taken for streets under various laws of Tennessee that authorize the taking of land by public entities by eminent domain. [General state eminent domain statutes: T.C.A. §§ 29-17-201, 29-17-801; public works projects: T.C.A. § 9-21-107; streets: T.C.A. §§ 7-31-107–110; controlled access highways: T.C.A. § 54-16-104. In addition, most municipal private act, general law, and home rule charters include a broad power of condemnation. With respect to the general law charters, see T.C.A. § 6-19-101 (manager-commission); T.C.A. § 6-2-201 (mayor-aldermanic); and T.C.A. § 6-33-101 (modified city manager-council)].

It was held in an unreported case that where a municipality chooses to exercise its power of eminent domain under its charter, it must follow the formal procedures prescribed in the charter for the exercise of that power [*City of Johnson City v. Campbell*, 2002 WL 112311 (Tenn. Ct. App.)].

T.C.A. § 7-31-101 authorizes municipalities to construct streets in annexed areas.

The Tennessee Department of Transportation, and counties and cities, separately or by state-local agreements, are authorized to construct **industrial highways**. Counties and cities can apparently construct such highways inside, and in some cases outside, their boundaries. It is said in T.C.A. § 54-5-406(b), that

Notwithstanding § 54-5-406 [which limits state participation in the construction of industrial highways under the conditions set out therein], cities and counties within this state may and are hereby authorized to use any funds available to them for the construction and maintenance of industrial highways, roads, and streets within their boundaries or within, or adjacent to, or in close proximity to any industrial sites or parks owned or partially owned by them, or lands owned or held by them for industrial use, when, in the opinion of a majority of the members of the governing body of any city or county within this state, the same will facilitate industrial development or expansion.

However, under the doctrine that roads built in a municipality by the state or its political subdivisions are city streets, presumably industrial highways built by the state or a county within a municipality are also city streets.

Creation of Alleys & Sidewalks

Reference Number: MTAS-810

An alley is a narrow street, and the establishment of public alleys and thoroughfares is governed by the same rules that apply to streets. [See *Lee v. Seiz*, 13 Tenn. App. 260 (1930); *Western Union Telegraph Co. v. Dickson*, 173 S.W.2d 714 (Tenn. App. 1941); *State ex rel. Matthews v. Metropolitan Government of Nashville and Davidson County*, 679 S.W.2d 946 (Tenn. 1984).]