



Determining the Width of 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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Determining the Width of Streets

Reference Number: MTAS-813

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Widths of Streets Based on Plats, Deeds, Etc.

Reference Number: MTAS-1478

Sometimes the width of street easements can easily be ascertained from a plat, deed, or other allied documents. That is probably most true of streets established by formal dedication and acceptance, by formal dedication and implied acceptance, and by eminent domain. However, often no such documents exist with respect to many street easements, particularly in the cases of implied dedication and acceptance and of prescription. Such documents as can be found in other cases do not usually specify the width of the easement.

The heavy weight of authority in the United States is that where there is an express grant of a street easement that does not specify its width, the width is determined by the intention of the parties to the grant, and that intention is determined from the facts and circumstances, sometimes including the use of the easement. Generally, the width determined by the courts is what is reasonable, convenient, and suitable [28 A.L.R.2d 253].

That also appears to be the rule in Tennessee. With respect to streets created by formal dedication and acceptance, it was said in *Town of Benton v. Peoples Bank of Polk County*, 904 S.W.2d 598 (Tenn. App. 1995), that "the object in all boundary cases is to find, as nearly as may be, certain evidence of what particular land was meant to be included for conveyance" [At 601]. It was also said in *Doyle v. Chattanooga*, 128 Tenn. 433 (1913), that

The execution of an official map by the city, showing the street offered to be dedicated to be such, has also been held to be evidence of an acceptance. [Citation omitted.] Where the dedication is clearly defined, as in this case by a registered map, *and the public user is of the whole*, practically speaking, the presumption is that an act of acceptance of a part thereof is an acceptance of the whole [Citations omitted] [At 441].

Widths of Streets Based on "User"

Reference Number: MTAS-1479

With respect to the width of street easements acquired by user or prescription, it is said in 39 Am.Jur.2d *Highways, Streets and Bridges*, sec. 63, that

As a general proposition, the width of a highway established solely by prescription or user is determined by the extent of such use.... While there are cases which appear to recognize that a highway acquired by prescription or user does not extend beyond the beaten or traveled path, it is more generally held that the public easement is not necessarily confined strictly to the beaten or traveled path in every instance. In some cases the determination of the width of a highway acquired by prescription or user rests upon whether or not a particular width is necessary for the convenience of the public.... Ditches along the side of a highway acquired by prescription or user are generally regarded within the boundaries of a highway.

It is likewise said in 10A McQuillin, *Municipal Corporations*, Section 39.29, that

The extent of the prescriptive easement, it is held, is governed entirely by the extent of the user. The boundary of a public highway acquired by public use is a question of fact to be determined by the appropriate finder of fact. This is to say, that the extent of a street or alley acquired by prescription is generally limited to the portion actually used.

But 10A McQuillin, *Municipal Corporations*, 30.22, also says, that

It has been held that the width of a prescriptive easement is not limited to that portion of the road actually traveled, and it may include the shoulders and the ditches that are needed and have actually been used to support and maintain the traveled portion.

76 A.L.R.2d 535 says that the width of street easements established by prescription is determined by the extent of use. It also appears to conclude that generally the width of such easements includes not only the traveled portions of the street, but also such adjacent land reasonably necessary for public travel as determined by the peculiar circumstances of the case in question, and such additional land as might be needed for repairs and improvements. It also points to cases holding that the easement includes drainage ditches and waterways.

Finally, 10A McQuillin, *Municipal Corporations*, Section 30.03 says that, "Street, in a legal sense, usually includes all parts of the way—the roadway, the gutters and the sidewalks."

However, it was said in *Blackburn v. Dillon*, 225 S.W.2d 46 (Tenn. 1946), that "[t]he term street in ordinary legal

signification includes all parts of the way, roadway, gutters and the sidewalks." In that case the width of the street easement in that case was clearly 40 feet, and the only question was whether the city had the authority to build a sidewalk within that easement as a form of public travel, but the proposition that the width of the "street" includes the roadway, gutters and sidewalks appears to apply to street width in general.

Widths of Streets Based on Statutes

Reference Number: MTAS-1480

In *Ludwick v. Doe*, 914 S.W.2d 522 (Tenn. Ct. App. 1996), the Court pointed to the definitions of "street" and "highway" in T.C.A. § 55-8-101(60) and (21). The definition of both terms is the same: "the entire width between boundary lines of every way when any part thereof is open to the use of the public for purposes of vehicular traffic." For that reason, concluded the Court:

It is obvious from these definitions that the concept of a 'street' or 'highway' contemplates an area that is wider than the part used for the "purposes of vehicular traffic." It should also be noted that neither definition is tied to a paved area. We believe that when the definitional language is given its 'ordinary and usual meaning' read in the context of the definitions, the conclusion is inescapable that the legislature intended that the words 'street' and 'highway' would be synonymous with the full right of way. Thus a 'street' or 'highway' as those words are used in Tennessee Code Annotated 55-8-118 [which regulates passing on the right], refers to the part designated for vehicular travel by the public, any paved shoulder, any unpaved shoulder, and any remaining part of the right of way [Citing *State v. Mains*, 634 S.W.2d 280, 282 (Tenn. Cr. App.)] [At 525].

In *State v. Mains*, 634 S.W.2d 280 (Tenn. Cr. App. 1982), the Court considered the question of whether a defendant charged with vehicular homicide arising from drunk driving was on the "highway," when the homicide occurred off the paved portion of the roadway. The area in question was described by witnesses as a

'pull-out place' and was described by one officer as being two hundred to three hundred feet long and wide enough for two or three cars to park side by side. This officer also testified the area was part of the 'state highway right of way.'

Pointing to the definition of "highway" in T.C.A. § 55-8-101(20) [now (21)], the Court declared that, "The word 'highway' is defined for the purposes of the drunken driving statute as: 'The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.'" [Note: the term "publicly maintained" was removed from the statute by Public Acts 1988, chapter 555]. Then the Court went on to determine what that width included.

The term 'public highway' has been described by our Supreme Court as 'such a passageway as any and all members of the public have an absolute right to use as distinguished from a permissive privilege of using same.' [Citations omitted.] Other states have held that the "shoulder" of a highway is included in the term 'highway.' [Citations omitted.] Interpreting a legislative definition similar to ours cited above, the North Carolina Supreme Court held that the statutory reference to the 'entire width' includes everything between the right of way lines of the 'highway' for statutory purposes [At 282].

Those definitions included the pull-off, concluded the Court.

T.C.A. § 54-5-202, declares with respect to the width of state highways in municipalities that

The streets so constructed, reconstructed, improved and maintained by the state shall be of such width and type as the department may think proper, but the width so constructed, reconstructed, improved and maintained shall not be less than eighteen feet (18'); and, in the case of resurfacing and maintenance, from curb to curb where curbs exist, or the full width of the roadway where no curbs exist.

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