

Widths of Streets Based on "User"

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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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.

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