



Municipal Discretion to Close Streets

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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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Generally, property owners have little legal voice in the closing 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 is said in *Sweetwater Valley Memorial Park v. City of Sweetwater*, 372 S.W.2d 168 (1963), citing other cases, that

Authorities are abundant for the proposition that a municipal corporation being the state's representative, may ordinarily vacate, discontinue, or abandon its easement in a street or part thereof, whenever, by its proper board, found, to be unnecessary for public use [Citation omitted].

The rule appears to enjoy universal acceptance in this court as has been stated by this Court on numerous occasions [Citations omitted].

In the absence of an allegation of fraud or a manifest abuse of discretion, courts will not inquire into the motives of municipalities for vacating a public street [At 169].

The Court continued with a citation of 25 Am.Jur., *Highways*, Section 29, page 418:

The question of the necessity for closing a street or highway, as distinguished from the question of public purpose or use, belongs exclusively to the legislative department of the government. So, the province of the public authorities in whom the power to vacate is vested to determine when it shall be exercised, and their action in this regard will not be reviewed by the courts in the absence of fraud or a manifest abuse of discretion. The court cannot control or revise such discretion on the ground of inexpediency, injustice or impropriety... Ordinarily, the presumption is that a street or highway was vacated in the interest of the public and that its vacation was necessary for public purposes, and the burden of showing to the contrary will be upon the persons objecting to the proceedings [At 169].

The same court built on those principles in *Cash & Carry Lumber Company, Inc. v. Olgiati*, 385 S.W.2d 115 (1964), in which the City of Chattanooga closed one block of a city street. The property upon which the street lay reverted to an abutting stove works, which was apparently using the street for storage and other purposes. Relying on *Sweetwater*, above, the Court upheld the chancellor's denial of *Cash & Carry's* petition for an injunction prohibiting the city from closing the street. *Cash & Carry* had not alleged facts sufficient to make out a case of fraud. "None of the officials here involved have been charged in the bill with acts showing falsity, concealment, deceit, or perversion of the truth" [At 117-18]. Nor did the facts show a manifest abuse of discretion. The fact that the property would revert to, and benefit, the abutting property owner, did not in and of itself show an abuse of discretion or fraud.

Turning to the issue of inconvenience suffered by *Cash & Carry* in the closing of the street, the Court declared that

To reach complainant's property, it is apparent that some convenience will be sacrificed. No longer will complainant have a direct access for a distance of two blocks to Main Street. Instead, travelers will be forced to go over one block east or west and then down, increasing the distance to Main Street at most one block. However, there is no allegation that *reasonable* egress and ingress will be destroyed [At 118] [Emphasis is mine].

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