



Streets Should be Closed By Ordinance

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,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

Table of Contents

Streets Should be Closed By Ordinance	3
---	---

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Reference Number: MTAS-1471

In *Wilkey v. Cincinnati, New Orleans & Texas Pacific Railway Company*, 340 S.W.2d 256 (1960), the Rhea County Chancery Court permanently enjoined the railroad and the city from closing a railway crossing on a certain street, which was barricaded on both ends of the crossing. However, it is clear that the case would have gone the other way had the city closed the crossing by ordinance. The city had passed a *resolution* to close the crossing upon the completion by the state of an underpass several blocks away. After the underpass was completed, the *contractor* barricaded the crossing in accordance with its contract with the state for the construction of the underpass. The city's resolution and the contractor's barricade was not good enough, declared the Court.

...We cannot agree that the resolution in question obviates the need of an *ordinance* closing the crossing on West Second Avenue... It may well be, as both the State and the Railway company strongly insist, that it is necessary to close the crossing on West Second Avenue to promote the safety of the traveling public. If so, the responsibility for closing it remains with the local authorities [At 259].

In *Cash & Carry Lumber Company*, the Court distinguished *Wilkey*, explaining why the injunction against the closing of the railroad crossing in that case was an aberration.

Wilkey [citation omitted], cited by appellants for the proposition that no remedy at law exists is readily distinguishable and is not controlling. In the *Wilkey* case, the *municipal government had failed to close the grade crossing by ordinance*, and the Court of Appeals held that there had been no exercise of eminent domain, and that no damages would be recoverable; therefore, an injunction was the proper remedy.

In the instant case, the proper municipal authority has by ordinance abandoned the street in question. If complainant's property has been thereby taken, the remedy is at law with an action for compensation [At 118] [Citing *Sweetwater*] [Emphasis is mine].

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