

May 20, 2005

Angela, there was a time long ago when justices of the peace held court in county districts; citizens were required to work one or more days periodically to maintain roads; assessors of property were elected from each civil district; and storeowners and residents were responsible for constructing and maintaining sidewalks in front of their establishments or residences. The general sessions court replaced the justice of the peace courts; the county highway department replaced the citizens requirement to work on county roads; one assessor of property is elected county wide, replacing an assessor for each civil district. Many city charters provided that property owners are required to construct and maintain sidewalks in front of their property. Several city charters still provide for that, including Smithville's, Fayetteville's, and Tullahoma's, to name a few.

Section 3 of the Smithville City Charter provides that the city has the authority to construct and maintain sidewalks. Section 7 says that the Board of Mayor and Aldermen has the power and authority to compel by ordinance the owners of property on any street, avenue, or alley to grade, construct, pave, and repair the sidewalks and footpavements. This section also gives the city the authority to construct and maintain the sidewalks, where an owner refuses to do so, and the city may attach a lien on the property to recover its costs.

On the surface these provisions appear to be contradictory. If the city was required to install sidewalks, and the subsequent section 7 also required that the owners construct sidewalks, the provisions would indeed be conflicting. The two sections do not conflict, because they give the city the flexibility of choosing either method for constructing and paying for sidewalks. I believe that your charter clearly provides that the city board can require owners to install sidewalks. The city ought to be consistent in using one provision or the other. State statutes authorize cities to require subdivision developers to install sidewalks in new subdivision developments.

Having said the above, I would like to note that section 7 appears to be a provision that has fallen by the wayside in many cities, and I think as time goes on fewer cities will rely on this procedure for constructing and maintaining sidewalks. I am sure that when this provision was inserted in city charters there was little regard for liability. I have discussed this matter with Dennis Huffer, our legal consultant in the Nashville office, and he advised that the better policy, even though the choice is the city's, would be for the city to install sidewalks. Here are the reasons. A sidewalk is a part of the city street, and the city street rights of way belong to the city, even though the property is privately owned. It is difficult to get consistency in construction and maintenance, and if due to faulty design, construction, or lack of maintenance, someone is injured, the city could well face potential liability. If an owner does not scrape the ice off the sidewalk in front of his business or resident, and a citizen slips and breaks a hip or leg, the city will be sued. The city can argue that maintenance is the responsibility of the property owner, and the citizen's attorney will maintain that while that may be true, it is the city's responsibility to see that sidewalks, as part of a public street, are maintained in a safe and hazard free condition. If a citizen hangs a heel in a crack in the sidewalk, even though it may have been constructed by the property owner, the city would almost certainly be sued. The potential liability from one lawsuit would likely be greater than the cost for the city to construct and maintain the sidewalks.

I might add that the city can construct sidewalks, and under Tennessee law, establish a special assessment for adjoining property owners to pay for the sidewalks. From a liability standpoint, this would be the best way to approach this matter.

I hope this answers your question. If I may be of further assistance, please feel free to call on me.

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