County Technical Assistance Service
INSTITUTE for PUBLIC SERVICE

May 18, 2024

Opening, Changing and Closing County Roads

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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 county 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 CTAS website material.

Sincerely,

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Reference Number: CTAS-843

The statutory law regarding acceptance of new county roads and the closure of existing county roads is very confusing and the county attorney should be consulted to determine the proper procedure to follow in the particular county. However, some general observations may be helpful. The CUHL must be reconciled to the greatest degree possible with the old general law on opening, closing and changing roads found in T.C.A., Title 54, Chapter 10, as well as other general law such as the general law granting certain powers to regional planning commissions and the state department of transportation in some instances. In 1995 the legislature passed a simpler alternative method of closing roads.

The Attorney General has opined that in counties under the CUHL, the CAO of the county highway department, or the elected highway commission or board in the counties with such an elected board (if a private act grants general control of the county road system to the elected board), has general control of the county highway system and this includes approving the acceptance of a new road, changing the route of an existing road or closing an existing county road before such a change may take place. Op. Tenn. Atty. Gen. U89-10 (January 31, 1989) (It should be noted that since that opinion was issued, the CUHL was amended to delete references to such authority held by elected highway commissions or boards.) However, this is not the only step involved. The county legislative body must pass on additions or deletions to the classifications of county roads in the county road list after receiving the recommendation of the CAO. T.C.A. § 54-10-103. However, if a road has obtained a public character under one of the methods in the Standard Life Ins. Co. v. Hughes case, it is doubtful whether the CAO or elected highway board may prevent the county legislative body from adding such a road to the county road list or prevent a court from declaring the road public and part of the county road system. Hackett v. Smith County, 807 S.W.2d 695 (Tenn. Ct. App. 1990); Rogers v. Sain, 679 S.W.2d 450 (Tenn. Ct. App. 1984).

One aspect of the Hackett v. Smith County case which has become significant due to later decisions limiting the application of the case is the fact that the county road commissioner certified on the plats that the streets, utilities and other improvements were installed in an acceptable manner according to county specifications and that a bond had been posted to insure the completion of all required improvements. In December 2003, the Court of Appeals decided a similar case coming out of Franklin County. In Shahan v. Franklin County, 2003 WL 23093836 (Tenn. Ct. App.), a developer and residents of a subdivision sued the county over the maintenance of roads within the subdivision. The county declined an offered dedication of the roads and further denied building permits for additional structures in the subdivision due to the inadequacy of the roads. At that point, the developer and residents sought a declaration of responsibility for road maintenance. The developer asserted that, as in the Hackett case, there had been an implied dedication accepted through public use. Although the court agreed that there was evidence of public use of the roads, it held that the doctrine of implied dedication did not apply because the roads were in an unapproved subdivision.

The court did recognize the Hackett case, however, and described it as the proper limited application of the doctrine of implied acceptance of a dedication in the subdivision setting. The court ruled that the doctrine may be invoked in regards to subdivision property when a local government has declined or refused to accept property after a developer has complied with all applicable regulations. Because of this case, it is more vital than ever for counties to have established subdivision regulations which include thorough specifications for roads and streets. Reading Hackett and Shahan together, subdivision roads can be expected to become the responsibility of the county unless it can be demonstrated that the developer failed to comply with minimum road standards.

If bonds are issued for construction of county roads or bridges, the approval of the CAO, the county legislative body and the Tennessee department of transportation must be obtained. T.C.A. §§ 54-9-139, 54-9-202. Also, the regional planning commission has authority to approve plats of subdivisions which may contain plans for roads or streets and may set standards for such roads or streets in the subdivision. T.C.A. §§ 13-3-401, 13-3-402, 13-3-406. However, the statutes specifically state that the approval of a plat by the regional planning commission shall not be deemed to constitute or affect an acceptance by any county or by the public of the dedication of any road or other ground shown upon a plat. T.C.A. § 13-3-405; Foley v. Hamilton, 659 S.W.2d 356, 360 (1983).

The old general law found in T.C.A., Title 54, Chapter 10, Part 2, dealing with petitions to open, change or close public roads must be considered when dealing with certain changes to the county highway system. As stated earlier, this old law must be reconciled to the extent possible with the newer statutes found in the CUHL. For example, before a road is closed, adjacent landowners or those controlling the land touched by the proposed road must be notified. T.C.A. §§ 54-10-202, 54-10-203. Since these changes may involve damages to property owners, a jury of view is provided to determine if damages exist and to

what extent. T.C.A. § 54-10-204. The exact workings of the petition process, jury of view, any necessary hearings and other procedural matters should be worked out with the consultation of the county attorney as to reconcile the conflicting statutes to the greatest extent possible.

The basic problem with the general law, found in T.C.A. §§ 54-10-201 *et seq.*, is that it was adopted in 1891 when all counties were required to have highway commissioners who supervised all road work in their respective districts. The law requiring these commissioners was repealed in 1963, but the provisions for accepting and closing county roads were not amended to reflect this change. Therefore, these sections still refer to the authority of highway commissioners within their respective districts. Only one or two counties in the state still have district highway commissioners as contemplated by this statute. In spite of these difficulties, the procedure established under these statutes was referenced in a 1963 court case and appears to be applicable to some extent. The procedures of this chapter may be summarized as follows:

1. A resident of the county may make an application to the highway commissioner of the district through which the road runs to open, change, or close a road through a signed petition. T.C.A. § 54-10-201.
2. A highway commissioner may, without a petition, proceed to open, change, or close a road which is deemed necessary for the public interest. T.C.A. § 54-10-213.
3. Before a road can be opened, closed, or changed, at least five (5) days' notice must be given to all interested parties of the time the road is to be changed. Landowners and those controlling land touched by the road are interested parties. T.C.A. § 54-10-202.
4. Once notice has been given, the highway commissioner in whose district the road runs will pick two other freeholders of the same district who have never been consulted on the issue and who will take an oath of impartiality and these persons will constitute a jury of view. T.C.A. § 54-10-204.
5. The jury of view will assess the damages to any property affected by the closing of the road. T.C.A. § 54-10-205.
6. Any aggrieved party may appeal the action of the jury of view to the Court of General Sessions and from there to circuit and appellate courts. In case of an appeal, the jury of view will forward all the papers in the case to the General Sessions Court. T.C.A. § 54-10-206.

Some counties use the highway committee of the county legislative body to carry out this procedure, with the full membership of the legislative body approving or rejecting the actions of the committee. However, it is noteworthy that the Attorney General, in Opinion No. U89-10, dated January 31, 1989, although stating that the provisions of Chapters 7 and 10 (CUHL), Title 54, T.C.A., must be read together, states that most of the duties to open or close a county road rests with the chief administrative officer of the county highway department where the county does not have a popularly elected highway commission, because of the more recent passage of the CUHL, which will supersede the older law when they are in conflict. However, the Attorney General opined that Chapters 7 and 10 of Title 54, T.C.A., must be reconciled whenever possible. Therefore, the procedure to be followed when opening or closing county roads remains confusing under the current law.
