

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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November 26, 2002

Opinion No. 02-129

State Financial Responsibility for Utility Relocation

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**QUESTION**

Under the provisions of Tenn. Code Ann. § 54-22-102 and Tenn. Code Ann. § 54-22-103, when an existing highway is widened, is the State of Tennessee financially responsible for relocating the above-ground and below-ground utilities that are located on the highway right-of-way claimed by the State of Tennessee under the presumption created by Tenn. Code Ann. § 54-22-101?

**OPINION**

Under the provisions of Tenn. Code Ann. § 54-22-102 and Tenn. Code Ann. § 54-22-103 the State of Tennessee shall be financially responsible for the necessary removal of any utility located entirely on the presumptive right-of-way claimed by the State of Tennessee pursuant to Tenn. Code Ann. § 54-22-101.

**ANALYSIS**

Under common law the State of Tennessee may direct the owner of a utility to remove its utility from an existing highway right-of-way at the expense of the owner of the utility. *Pack v. Southern Bell Telephone & Telegraph Company*, 215 Tenn. 503, 387 S.W.2d 789 (1965). However, there are statutory exceptions to this common law rule. *See* Tenn. Code Ann. §§ 54-5-801 et seq.

Tenn. Code Ann. § 54-22-101 provides in pertinent part:

Wherever the state proposes to improve a section of an existing two (2) lane undivided public road, the width of the right-of-way of which cannot be ascertained totally or partially by instruments of conveyance, court orders or otherwise, there shall be a presumption that the unascertained width is twenty-five feet (25') on either side of the centerline of the traveled portion of the road.

When the state invokes this presumption, the state becomes responsible for the necessary removal of any utilities located entirely on the presumptive right-of-way claimed by the state. Tenn. Code Ann. §§ 54-22-102 and 54-22-103. This statutory exception to the common law rule applies only to circumstances in which the state invokes the Tenn. Code Ann. § 54-22-101 presumption. *Id.*

It is the opinion of this office that the responsibility imposed upon the state by these statutes includes not only the burden of physically removing the utility in question but also the burden of paying for that removal.

In construing a statute, the fundamental goal is to ascertain and give effect to the intent of the legislature without unduly restricting or expanding the intended scope of the statute. *State v. McKnight*, 51 S.W.3d 559 (Tenn. 2001). When the language of a statute is ambiguous, one must look to the statutory scheme as a whole, as well as legislative history, to discern its meaning. *Id.* The word *responsible*, as used in these statutes, is arguably ambiguous. However, this office has examined the legislative history of these statutes and concluded that the General Assembly intended that the state would be financially responsible for the necessary removal of any utilities located entirely on the presumptive right-of-way claimed by the state under Tenn. Code Ann. § 54-22-101. H. Transportation Comm. and H. Calendar and Rules Comm., 94<sup>th</sup> General Assembly, Acts 1985, Ch. 265.

It is important to note that the state is also financially responsible for the cost of utility relocation under certain circumstances specified in Tenn. Code Ann. § 54-5-804. That statute applies to any state highway that is part of the interstate and defense highway system of the United States. Tenn. Code Ann. § 54-5-802(3).

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