S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 00-100

Maintenance of Roads Within State Parks, State Forests and State Natural Areas

QUESTIONS

1. Under Executive Order No. 39, issued by Governor Alexander, who is responsible for the construction, maintenance and repair of roads, highways and bridges that lie within the boundaries of state parks, state forests and other state natural areas?

2. May a county, through action of its legislative body, assume control of a road that lies within a state park or state forest, place such road on the listing described in Tenn. Code Ann. § 54-10-103 and assume responsibility for maintenance of the roads by the county highway or public works department? If so, must the Department of Environment and Conservation, the Department of Transportation or any other state entity agree to such action?

3. If a county assumes control of a road that lies within a state park or state forest, what property interest in the right-of-way belongs to the county?

4. May a county contract with the State of Tennessee in accordance with Tenn. Code Ann. § 54-7-202(d)(2) to maintain roads within a state park or state forest? If so, must the county be reimbursed for the cost of the work?

OPINIONS

1. Executive Order 39 directed that the responsibility for maintenance of state roads and parking areas lying within the boundaries of state parks be transferred from the Department of Conservation to the Department of Transportation. It is the opinion of this office that the Executive Order does not expressly encompass roads inside state forests, as these do not appear to meet the definition of "parks" under the order. This construction, with one slight exception, is reinforced by a subsequent agreement between the two agencies. The Executive Order also only speaks to the maintenance of roads and does not address responsibility for their construction. Furthermore, although the order refers to "all" roads within state parks, it would not encompass roads inside the parks that are designated county roads.

2. No. A county has no authority to assume control of a state road that lies within the boundaries of a state park or state forest and place it on its list of county roads under Tenn. Code

Ann. § 54-10-103, or under any other provision of Title 54 of the Code. Such roads are under the control of the State.

3. This question is pretermitted by our response to Question 2.

4. Counties are authorized to enter into contracts with the State for the maintenance of roads inside state parks or state forests under Tenn. Code Ann. §§ 54-7-116 or 54-7-202(d)(2), as long as the agreement provides that the county road department is to be reimbursed for the costs of such project.

ANALYSIS

1. Scope and Purpose of Executive Order 39

In February, 1983, Governor Alexander issued Executive Order No. 39 transferring responsibility for maintaining roads and parking areas in state parks from the Department of Conservation to the Department of Transportation (TDOT). The scope of the order is expressly limited in paragraph 1 to "lands defined as parks in Tennessee Code Annotated, Section 11-3-101". This statute provides as follows:

> For the purposes of the department of environment and conservation, "park" means and includes any and all areas of land heretofore or hereafter acquired by the state, which by reason of having natural and historic features, scenic beauty or location, possess natural or potential physical, aesthetic, scientific, creative, social or other recreational values, and are dedicated to and forever reserved and administered by the state for recreational and cultural use and enjoyment of the people.

Tenn. Code Ann. § 11-3-101.

Although the language of the above provision is quite broad, we do not believe the definition necessarily encompasses state forests. We note, first, that the statutes creating the state park system, including the definition in Tenn. Code Ann. § 11-3-101, were originally enacted through the Public Acts of 1937, Chapter 266. At the same time, by different legislation, the General Assembly enacted laws creating a Forestry Division under the Department of Conservation and separately defining the term "state forest". *See* 1937 Pub. Acts, ch. 280, § 5. The present definition of "state forests" is codified at Tenn. Code Ann. § 11-4-103(11). This leads us to believe that the latter term was not intended to be incorporated in the definition of "park".

But more telling on this point is a formal Memorandum of Understanding between the Department of Conservation and TDOT concerning the maintenance of roads inside state parks. This agreement was entered into on May 5, 1983, almost three months after Executive Order 39 was issued, and it provides, in pertinent part, as follows:

> Forest roads are not to be maintained by Transportation, except that paved roads within State Forests which are access routes to State Parks are treated as Park roads for purposes of this memorandum of agreement and will be maintained by Transportation.

Memorandum of Understanding, p.1, ¶ 3 (copy attached).

In February, 1991, the Division of Forestry was transferred from the Department of Conservation to the Department of Agriculture by Executive Order No. 41. Thus, those roads inside state forests that are not considered "park" roads for purposes of the agreement between Conservation and TDOT would remain the responsibility of the Department of Agriculture and its Division of Forestry.

The Natural Areas Preservation Act, at Tenn. Code Ann. §§ 11-14-101 to 11-14-407, was originally enacted in 1971, eight years after the last amendment to the definition in Tenn. Code Ann. § 11-3-101, but well before the issuance of Executive Order 39. This act defines "area" as "land or water, or both, whether in public or private ownership, which has scenic, natural or scientific values." Tenn. Code Ann. § 11-14-103(1). Thus, the definitions of "park" and "natural area" share common attributes. The Natural Areas Act also contains a provision that implicitly recognizes that certain components of the natural areas system may already be or may become part of a state park. *See* Tenn. Code Ann. § 11-14-113. Furthermore, it is our understanding that both TDOT and the Department of Environment and Conservation (TDEC - formerly the Department of Conservation) have construed Executive Order 39 to include roads lying within those state owned natural areas that are part of the park system. Thus, TDOT is responsible for maintaining those roads as well.

Finally, we note that Executive Order 39 only concerns the transfer of responsibility for the maintenance of roads and parking areas in state parks and does not address responsibility for their construction. We assume that TDEC retains this latter responsibility. And although the order refers to "all" roads within state parks, it would not encompass roads inside the parks that are designated county roads.

2. County Authority to Assume Control of Roads Within State Parks or Forests

You have inquired whether a county may assume control of a road that lies within a state park or state forest and place it on the list of county roads under Tenn. Code Ann. § 54-10-103. County road systems are established by each county highway commission in coordination with the county legislative body. *See* Tenn. Code Ann. §§ 54-8-102 and 54-10-102. But TDOT is responsible for designating a system of state highways and determining what roads are to be constructed and maintained by the use of state highway funds. Tenn. Code Ann. § 54-5-101. Furthermore, Tenn. Code Ann. § 54-1-126 provides that TDOT is responsible for maintaining those roads, highways and bridges that it has "designated" as being on the state system of highways or interstate highways. The Memorandum of Understanding entered into between Conservation and TDOT in 1983 provides that "[p]ark road priorities will be evaluated in conjunction with all other needs on the State System of Highways." *See* Memorandum, p.2, ¶ 6. Although this statement could be read to mean that the roads inside state parks are part of the state system of highways, it is our understanding that TDOT has not actually designated them as such. Rather, park roads are considered to be under the control of TDEC, which has simply contracted with TDOT for their maintenance. And, as stated above, those roads inside state forests that are not considered "park" roads for purposes of the agreement between the two agencies would still remain the responsibility of the State, under the Department of Agriculture and its Division of Forestry.

It is therefore the opinion of this Office that the classification and listing of county roads under Tenn. Code Ann. § 54-10-103 is limited to those roads that are designated county roads. There is no authority under that provision or any other provision of Title 54 of the Code that would permit a county to assume control of a road in a state park or state forest that is already under state control.

3. Authority of County to Contract with State for Maintenance of Park or Forest Roads

County road departments are authorized under Tenn. Code Ann. § 54-7-202(d)(2) to perform work for other governmental entities, provided they are reimbursed for the costs of such projects. This authorization must come from the county governing body. Tenn. Code Ann. § 54-7-202(d)(2). While this provision does not expressly authorize contractual agreements between a county and the State, there is authority elsewhere in the Code. Tenn. Code Ann. § 54-7-116 provides that the chief administrative officer of each county highway department has authority to sign agreements with TDOT on behalf of the county. This statute creates a legal presumption of such authority for the chief administrative officer, but it also provides as follows:

> . . . Once an agreement is executed by the chief administrative officer of the county highway department . . . , the agreement shall be fully binding upon the applicable county. Such presumption of law may only be overcome by the provision of notice by the county legislative

> body that the chief administrative officer of the county highway department does not have the authority to execute such agreements on behalf of the county. The receipt of such notice must be acknowledged by the department in order to overcome the presumption set forth above.

Tenn. Code Ann. § 54-7-116.

In light of the foregoing, we conclude that a county may enter into a contractual arrangement with the State for the maintenance of roads in state parks, as long as the agreement provides that the county road department is to be reimbursed for the costs of such project, and the county legislative body has not negated the authority of the chief administrative officer to execute such agreements by the notice requirement in Tenn. Code Ann. § 54-7-116. Finally, we note that Tenn. Code Ann. § 54-7-116 only speaks to contracts between the county highway department and the department of transportation. With respect to roads in state forests that are not considered "park" roads for purposes of the agreement between Conservation and TDOT, we believe the county governing body has the implied power under Tenn. Code Ann. § 54-7-202(d)(2) to authorize the chief administrative officer of the county highway department to enter into contractual arrangements with other governmental agencies, including the Department of Agriculture or its Division of Forestry, to perform road maintenance.

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