

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

**June 8, 2015**

**Opinion No. 15-49**

**Maintenance Obligation with Respect to a Public Access Road**

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**Question 1**

Is the State of Tennessee or is Cheatham County responsible for the maintenance of the Narrows of the Harpeth Road, the one-mile road in the Harpeth River State Park that provides public access to the Narrows of the Harpeth site?

**Opinion 1**

This Office cannot opine on the maintenance responsibility for Narrows of the Harpeth Road because the answer depends on facts unavailable to this Office.

**Question 2**

If the answer to Question 1 is that the State is responsible for the maintenance of the road, which agency of the State government, the Tennessee Department of Environment and Conservation or the Tennessee Department of Transportation, is responsible for the maintenance obligation?

**Opinion 2**

Assuming—but not opining—that the State were responsible for the maintenance of the road, then, that maintenance responsibility would lie with the Tennessee Department of Transportation.

**ANALYSIS**

The Tennessee Department of Environment and Conservation (TDEC) manages state parks, including the Harpeth River State Park in Cheatham County. *See* Tenn. Code Ann. §§ 11-3-103(a), 11-3-106 (charging TDEC with improving, caring for, supervising, and administering state parks). In 1983, maintenance responsibility for roads and parking areas inside state parks was transferred by executive order to the Tennessee Department of Transportation (TDOT). Exec. Order No. 39 (1983). But this Office has previously opined that the executive order does *not* apply to county roads inside state parks. *See* Tenn. Att’y Gen. Op. 00-100 (May 24, 2000). Instead, county roads are maintained by the counties. *See Graham v. Bradley Cnty.*, No. E2012-02369-COA-R3-CV, 2013 WL 5234240, at \*7 (Tenn. Ct. App. Sept. 17, 2013); *Baker v. Seal*, 694 S.W.2d 948, 950 (Tenn. Ct. App. 1984).

Thus, if the road in question is a county road, Cheatham County bears maintenance responsibility. If it is not a county road, then the State would be responsible for its maintenance and, pursuant to Executive Order 39, TDOT would be the state agency charged with maintaining the road.

Whether a road is a county road is a question of fact to be determined based on the facts of each particular case and evaluated in light of the totality of the circumstances. The inquiry is not only highly fact-specific, but involves consideration of many factors. We note, too, that the facts relevant to the determination may, in some cases, be in dispute.

A road need not be listed on the county's road list to be a county road. *Webb v. Douglas*, No. W2014-00299-COA-R3-CV, 2014 WL 6908296, at \*6 (Tenn. Ct. App. Oct. 22, 2014). A road is a county road if, prior to the State's acquisition,<sup>1</sup> the owners of the land on which the road sits dedicated the land to public use and the county accepted the dedication. *Rainwater v. Sumner Cnty.*, 342 S.W.3d 500, 503 (Tenn. Ct. App. 2010). Dedication and acceptance can be express or implied. *Id.*

For implied dedication, the inquiry focuses on "whether the landowner intended to dedicate the land to public use." *Rogers v. Sain*, 679 S.W.2d 450, 453 (Tenn. Ct. App. 1984). Among the factors showing an intent to dedicate are: "The landowner opens a road to public travel, acquiescence in the use of the road as a public road; and the fact that the public has used the road for an extended period of time." *Id.* (internal citations omitted). "While dedication is not dependent on duration of the use, extended use is a circumstance tending to show an intent to dedicate." *Id.* "Finally, an intent to dedicate is inferable when the roadway is repaired and maintained by the public." *Id.* Acceptance may be shown by formal act by public authorities or by "common use by the general public." *State ex rel. Matthews v. Metro. Gov't of Nashville & Davidson Cnty.*, 679 S.W.2d 946, 949 (Tenn. 1984).

Whether a road has been dedicated and accepted is, again, highly fact-dependent. *See Ellis v. Brabson*, 42 S.W. 438, 439 (Tenn. 1897); *Hughes v. Barbee*, No. E2012-01330-COA-R3-CV, 2013 WL 1441994, at \*7 (Tenn. Ct. App. Apr. 9, 2013) (deferring to the trial court's credibility determination in reference to witnesses who observed public use of a road). For example, courts have considered, *inter alia*, county maintenance of the road, *Rainwater*, 342 S.W.3d at 505, inclusion in the county's road list, *id.*, county erection of road signs or bridges, *id.*, public resolutions referencing the road, *id.*, paving of the road, *McCord v. Hays*, 302 S.W.2d 331, 335 (Tenn. 1957), construction of utility poles and storm sewers, *id.*; *West Meade Homeowners Ass'n v. WPMC, Inc.*, 788 S.W.2d 365, 366 (Tenn. Ct. App. 1989), deed descriptions referencing the road, *McCord*, 302 S.W.2d at 334, deeds of conveyance, *see Brandy Hill Estates, LLC v. Reeves*, 237 S.W.3d 307, 320 (Tenn. Ct. App. 2006), historical county and state maps, *Rainwater*, 342 S.W.3d at 505, tax maps, *id.*, tax assessments for the land on which the road sits, *id.*, maps or plats referenced when the land is sold, *Smith v. Black*, 547 S.W.2d 947, 951 (Tenn. Ct. App. 1976), driveway connections, *Lay v. Wallace*, No. W2011-02285-COA-R3-CV, 2013 WL 654360, at \*11 (Tenn. Ct. App. Feb. 21, 2013), existence of obstructions, *id.*, observations of passing school buses and mail carriers, *id.*; *Webb*, 2014 WL 6908296 at \*7, pedestrian traffic, *Matthews*, 679 S.W.2d at

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<sup>1</sup> *See* Tenn. Att'y Gen. Op. 00-100 (May 24, 2000) (opining that a county cannot assume control of roads in state parks that are already under state control).

949, and continuous public use, *id.* These factors focus on the time when the road was dedicated and accepted, often requiring testimony from witnesses who lived near the road in the past when it was established or documentary evidence dating back decades. *See, e.g., Lay*, 2013 WL 654360, at \*3 (a 2013 decision considering testimony from witnesses who lived near the road in the 1940s); *Matthews*, 679 S.W.2d at 949 (a 1984 decision referencing maps from 1889, 1908, and 1928).

Determination of dedication and acceptance does not end the inquiry. Maintenance responsibility ceases upon abandonment of the road. *See Ty Farming Co. v. Belew*, No. 93-285, 1996 WL 649173, at \*4 (Tenn. Ct. App. Nov. 8, 1996). A road is not abandoned merely due to a county's failure to maintain the road or a county's exclusion of the road from its road list. *See Shelco Corp. v. Barker*, No. 03A01-9509-CH-00317, 1996 WL 438877, at \*1-2 (Tenn. Ct. App. July 30, 1996). Rather, abandonment requires "clear and unequivocal evidence of decisive and conclusive acts. . . . [T]here must be some positive showing of an intention to abandon." *Jacoway v. Palmer*, 753 S.W.2d 675, 679 (Tenn. Ct. App. 1987). Like dedication and acceptance, abandonment is highly fact-specific and could turn on a number of factors, including "use of the road by the public, the condition of the road, maintenance of the road by the county or the parties, and any activity inconsistent with the use of the property as a public road." *Ty Farming*, 1996 WL 649173, at \*3.

In sum, the question of maintenance responsibility for the Narrows of the Harpeth Road requires a threshold determination of whether the road is a county road. This Office cannot opine on that threshold determination, however, because the determination is entirely dependent on facts that are unavailable to this Office and that may be contested. Since this Office cannot make the threshold determination of whether the road is a county road, it cannot provide an opinion as to whether the County or the State is responsible for maintaining the Narrows of the Harpeth Road. But, were this Office able to opine that the State has maintenance responsibility, it would follow that TDOT would be the state agency charged with that responsibility.

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