

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

**June 8, 2015**

**Opinion No. 15-50**

**Jurisdiction and Maintenance of County Roads in State Forests**

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**Question 1**

Is the Tennessee Department of Agriculture responsible for the maintenance and repair of county road segments located within state forests that have been established and constructed by the county government and/or have been included on the county's road list?

**Opinion 1**

No.

**Question 2**

If the answer to Question 1 is "yes" then what property rights or responsibilities, if any, does the county retain in a county road segment located in a state forest?

**Opinion 2**

Because the answer to Question 1 is "no," Question 2 requires no response.

**Question 3**

Does the Tennessee Department of Agriculture have maintenance responsibility or jurisdiction over other public roads or rights of way located within state forests that are of unknown jurisdiction or abandoned maintenance?

**Opinion 3**

This Office cannot opine on the maintenance responsibility for roads and rights-of-way of unknown jurisdiction because the inquiry is fact-specific in each case. The Department of Agriculture is responsible for maintaining forest roads and rights-of-way of abandoned maintenance but not for roads and rights-of-way of abandoned maintenance in state forests that fall within the purview of other entities.

**ANALYSIS**

1. You have asked whether the Tennessee Department of Agriculture is responsible for the maintenance and repair of county roads in state forests with specific reference to roads that

have been established and constructed by the county government and/or have been included on the county's road list. State forests are state-administered lands used to "provide for the multiple use management<sup>1</sup> of the various renewable and nonrenewable resources such that those resources are utilized in combination that best meets the needs of the people of Tennessee." Tenn. Code Ann. §§ 11-4-103(11), 11-4-801. The Department of Agriculture, through its Division of Forestry, can acquire lands for use as state forests "by purchase, gift, lease, or otherwise." *Id.* §§ 11-4-401, 11-4-804. Once acquired, the lands "become the property of the state, to be improved, cared for, and administered" by the Department for forestry purposes. *Id.* § 11-4-404. Thus, within the authority of Tenn. Code Ann. § 11-4-404, the Department could create and maintain—i.e., improve<sup>2</sup> and care for—a system of forest roads to accomplish its forestry purposes.

But the Department is not responsible for county roads in state forests. Counties are responsible for maintaining their own roads. *See* Tenn. Code Ann. § 54-7-109(a); *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).

Whether a road is a county road depends on the circumstances of a particular case. The inquiry turns on public dedication of the road and the county's acceptance of it. *See State ex rel. Matthews v. Metro. Gov't of Nashville & Davidson Cnty.*, 679 S.W.2d 946, 948 (Tenn. 1984). Provided that the state had not previously assumed control of the road, *see* Tenn. Att'y Gen. Op. 00-100 (May 24, 2000), these facts would evidence county acceptance, *see Gore v. Stout*, No. M2006-02111-COA-R3-CV, 2008 WL 450597, at \*5 (Tenn. Ct. App. Feb. 19, 2008) (dicta) (noting that there were some indications that the public had accepted a portion of a road because, among other things, that portion of the road appeared in the county road list); *Peach v. Medlin*, No. W2003-02152-COA-R3-CV, 2004 WL 948481, at \*11 (Tenn. Ct. App. Apr. 28, 2004) (listing county-funded erection or maintenance of the road as evidence that could have supported a finding of acceptance).

When the county accepts a road as public, the county holds an easement in trust for the public and incurs a duty to maintain the road. *Jacoway v. Palmer*, 753 S.W.2d 675, 677 (Tenn. Ct. App. 1987) (holding that the governing body can accept a dedication "as a public trust *and maintain the road*" (emphasis added)); *see also State ex rel. Kessel v. Ashe*, 888 S.W.2d 430, 433 (Tenn. 1994) ("[T]he county's interest [in dedicated roadways] is accompanied only by the 'public function' or 'duty' of maintaining the roads in a safe condition for the use of the public."); *Vinson v. Nashville, C. & St. L. Ry.*, 321 S.W.2d 841, 844 (Tenn. 1958) ("In such public road title to the easement or right of way would have to be decreed . . . to the county to be held by it in trust for the public and the road to be maintained by it for the public.").

Those who acquire land on which a road sits—e.g., the Department—take the land subject to this public-trust easement:

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<sup>1</sup> "Multiple use" includes "a combination of timber production, demonstration, watershed protection, wildlife management, recreation, and aesthetics." Tenn. Code Ann. § 11-4-103(7).

<sup>2</sup> To "improve" is to "develop (land), whether or not the development results in an increase or a decrease in value." Black's Law Dictionary 773 (8th Ed. 2004).

The fee that is in the abutting landowner is subject to the easement rights of others. If there is a public acceptance of the road, the fee is burdened with the rights of the general public to use the land as a public road until such time as it is closed by public authority.

*Jacoway*, 753 S.W.2d at 677. Therefore, counties—not the Department—are responsible for maintaining county roads in state forests.

This conclusion is consistent with the previous opinion of this Office that the Department of Transportation was not responsible for county roads in state parks, *see* Tenn. Att’y Gen. Op. 00-100 (May 24, 2000), and is not affected by a county’s inclusion or non-inclusion of the road in its county road list, *see Shelco Corp. v. Barker*, No. 03A01-9509-CH-00317, 1996 WL 438877, at \*1–2 (Tenn. Ct. App. July 30, 1996) (holding that a county had not abandoned an unmaintained road that was absent from the county road list).

2. The response to Question 1 makes a response to Question 2 unnecessary.

3. In Question 3 you ask whether the Department of Agriculture has maintenance responsibility for (i) roads and rights-of-way of unknown jurisdiction in state forests, and (ii) for roads and rights-of-way of abandoned maintenance in state forests.

Whether there is a duty to maintain a road or right-of-way of unknown jurisdiction requires a fact-intensive inquiry to determine if the road or right-of-way is public and, if it is, what entity bears the responsibility for its maintenance. *See McCord v. Hays*, 302 S.W.2d 331, 334 (Tenn. 1957). Various facts specific to the particular road or right-of-way may be relevant to this inquiry, including deeds for the land on which the road or right-of-way sits, the underlying land’s tax treatment, formal government action, road construction, improvements, public use, appearance on a road list or map, and abandonment, which itself is based on a fact-specific inquiry. *See, e.g., State ex rel. Matthews*, 679 S.W.2d at 948–49; *McCord*, 302 S.W.2d at 334–35; *City of Knoxville v. Hunt*, 299 S.W. 789, 790–91 (Tenn. 1927); *Gore*, 2008 WL 450597, at \*5; *Peach*, 2004 WL 948481, at \*11; *Ty Farming Co. v. Belew*, No. 93-285, 1996 WL 649173, at \*3–4 (Tenn. Ct. App. Nov. 8, 1996).

Because determining responsibility for roads and rights-of-way of unknown jurisdiction depends on the particular facts pertaining to each road or right-of-way, this Office cannot provide an opinion responsive to this part of Question 3.

The duty of road maintenance ceases when a road is abandoned.<sup>3</sup> *Ty Farming*, 1996 WL 649173, at \*4. But roads and rights-of-way of abandoned maintenance are not necessarily abandoned in the legal sense. *See Cockroft v. Claunch*, No. 02A01-9108-CH-00164, 1992 WL 69621, at \*4 (Tenn. Ct. App. Apr. 8, 1992). Legally, abandonment requires “clear and unequivocal evidence of decisive and conclusive acts. . . . [T]here must be some positive showing of an intention to abandon.” *Jacoway*, 753 S.W.2d at 679. Failing to maintain a road or right-of-way,

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<sup>3</sup> Generally, roads cease to be public after abandonment, 39A C.J.S. *Highways* § 204, and the landowner possesses whatever duties are imposed by tort law, *see Williams v. City of Nashville*, 63 S.W. 231, 232–33 (Tenn. 1901); *see also S. v. Cowan Stone Co.*, 221 S.W.2d 809 (Tenn. 1949).

even if coupled with the road's exclusion from the county road list, does not constitute a positive showing of abandonment. *See Shelco Corp.*, 1996 WL 438877, at \*1–2; *Cockroft*, 1992 WL 69621, at \*4 (citing *Cartwright v. Bell*, 418 S.W.2d 463, 470 (Tenn. Ct. App. 1967)).

Thus, roads and rights-of-way of abandoned maintenance, absent additional evidence, remain the responsibility of their original stewards. *See Templeton v. Sumner Cnty.*, No. 01-A01-9202-CH-00071, 1992 WL 207763, at \*3–4 (Tenn. Ct. App. Aug. 28, 1992). Therefore, the division of responsibility outlined in the analysis for Question 1 and in Tennessee Attorney General Opinion 00-100 (May 24, 2000) continues to apply for roads and rights-of-way of abandoned maintenance in state forests: the Department of Agriculture is responsible for forest roads and rights-of-way of abandoned maintenance but not for roads and rights-of-way of abandoned maintenance that fall within the purview of other entities, such as park access roads and county roads.

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