STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

October 11, 2017

Opinion No. 17-46

Scope of a County's Authority to Repair Roads Leading to Cemeteries

Question 1

Does Tenn. Code Ann. § 54-7-202 prohibit a county from repairing or maintaining roads in such a county if the roads lead to a cemetery and are available for public use?

Opinion 1

Not necessarily. Tennessee Code Annotated § 54-7-202 only prohibits the use of non-monetary county resources for anything other than official county road purposes, subject to statutory exceptions.

Question 2

Would the answer to Question 1 change if the roads were not on the county's road list?

Opinion 2

No.

Question 3

If a county is prohibited from repairing the roads, may funds allocated by the county legislative body pursuant to Tenn. Code Ann. § 46-2-107 be used to pay or reimburse the county highway department for the repair and preservation of the roads?

Opinion 3

No.

Question 4

Do the above-cited laws prohibit a county from contracting with a private contractor to repair and preserve the roads described in the previous questions?

Opinion 4

No, provided that the county has the authority to utilize its funds to repair and preserve the roads.

ANALYSIS

Each of the questions concerns an application of the provisions of Titles 68 and 46 of the Tennessee Code. The primary goal of statutory construction "is to carry out legislative intent without broadening or restricting the statute beyond its intended scope." *Johnson v. Hopkins*, 432 S.W.3d 840, 848 (Tenn. 2013) (quoting *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 895 (Tenn. 2011)). In so doing, courts "examine the 'natural and ordinary meaning of the language used, without a forced or subtle construction that would limit or extend the meaning of the language.'" *Lavin v. Jordan*, 16 S.W.3d 362, 365 (Tenn. 2000) (quoting *Tuggle v. Allright Parking Sys., Inc.*, 922 S.W.2d 105, 107 (Tenn. 1996)). "When a statute's meaning is clear, '[courts] apply the plain meaning without complicating the task' and enforce the statute as written." *Id.* (quoting *Lind*, 356 S.W.3d at 895).

1. & 2. Statutory Prohibition on Maintaining Roads in a County Leading to a Cemetery

Generally, Tenn. Code Ann. § 54-7-202 bars the expenditure of county non-monetary resources for anything other than official county road purposes, including individual and private purposes, subject only to the exception in subsection (d):

> (a) The chief administrative officer shall not authorize or knowingly permit the trucks or road equipment, the rock, crushed stone or any other road materials to be used for any private use or for the use of any individual for private purposes, and the chief administrative officer's failure to see that this subsection (a) is enforced is a Class C misdemeanor.
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> (b) Any employee of the county road department who uses any truck or any other road equipment or any rock, crushed stone or other road material for that employee's personal use, or sells or gives those things away, shall be immediately discharged.
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> (c) No truck or other road equipment or any rock, crushed stone or any road material shall be used to work private roads or for private purposes of owners of the roads.
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> (d) Neither the chief administrative officer nor any other official or employee of the county may use any county vehicle, equipment, supplies or road materials for other than official county road purposes; however, the county governing body has the authority to authorize the county road department to perform work for other

> governmental entities; provided, that the cost of the projects so authorized is to be reimbursed to the county road department.

The authority of a county to repair or maintain a road thus depends on the ownership and designation of the road. If the road in question was designated as a county road, the statute does not prohibit a county from repairing or maintaining it. Tenn. Atty. Gen. Op. 00-100 (May 24, 2000); Tenn. Code Ann. §§ 54-10-102, -103. If the road in question is owned by another governmental entity, a county is permitted to authorize the county road department to perform the work for reimbursement. Tenn. Code Ann. § 54-7-202(d); Tenn. Atty. Gen. Op. 00-100 (May 24, 2000).

Public use of the road does not necessarily mean that maintenance or repair of that road would be considered an official county road purpose. What constitutes an official county road purpose is a question of fact, the answer to which will depend on the particular facts and circumstances in any given situation. For example, even if a private road is used by the public, that alone is insufficient to convert it to a county road. *Vaughn v. Brewer*, No. E2009-02288-COA-R3-CV, 2010 WL 3307075 (Tenn. Ct. App. Aug. 23, 2010). A road cannot be added to a county public road list without notice to interested parties. Tenn. Code Ann. §§ 54-10-103, -202. Nor can a road be classified as a public road unless it is statutorily established or dedicated by the owner to public use. *See Vaughn*, 2010 WL 3307075, at *2 (citing *Cole v. Dych*, 535 S.W.2d 315 (Tenn. 1976) and *West Meade Homeowners Ass'n., Inc., v. WPMC, Inc.,* 788 S.W.2d 365 (Tenn. Ct. App. 1989)).

However, a road leading to a cemetery might also be subject to Tenn. Code Ann. § 46-2-107, which provides in pertinent part:

> (a) Notwithstanding any law to the contrary, upon a majority vote of the legislative body of the local government, the local government may draw upon its general fund and may solicit, receive, and utilize funds from all other sources, public or nonpublic, for the purpose of rehabilitating or maintaining dilapidated or abandoned cemeteries, or portions of cemeteries, subject to the limitations imposed by subsection (b). The maintenance may include:
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> . . .
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> (2) Repairing and preserving the drains, water lines, roads, fences, statues, fountains and other structures; . . . .
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> (b) This section shall not be construed to authorize any local government to utilize funds to maintain cemeteries or portions of cemeteries that are presently maintained adequately or that maintain a sufficient improvement care trust fund pursuant to this chapter and chapter 1 of this title.

> (c) As used in this section, "local government" means any county, municipality, city, or other political subdivision of this state.

If a road leading to an abandoned or dilapidated cemetery were deemed to be a "portion[] of [a] cemeter[y]," Tenn. Code Ann. § 46-2-107 would permit a county to solicit, receive, and use funds to rehabilitate and maintain that road even if the road was not a county public road under Tenn. Code Ann. § 54-10-103(a). Whether any particular road leading to a cemetery may legitimately be deemed "a portion" of that cemetery is entirely a question of fact, not of law, and the answer would depend on the unique circumstances of each particular road and cemetery.

3. Allocation of Funds to Pay County Road Department

As discussed above, if a road qualifies as part of a dilapidated or abandoned cemetery, the county would be permitted to solicit, receive, and use funds to rehabilitate and maintain the cemetery, including any road that is a portion of the cemetery. Tenn. Code Ann. § 46-2-107. But Tenn. Code Ann. § 46-2-107 does not abrogate Tenn. Code Ann. § 54-7-202's prohibition on county officers and county employees from using any county vehicle, equipment, supplies, or road materials for non-official county road purposes. Accordingly, while a county may use those funds solicited and received for the purpose of rehabilitating a cemetery, it may not use its own non-monetary resources, even if reimbursed with the funds received.

4. Contracting with a Private Entity to Maintain Roads

Neither Tenn. Code Ann. § 46-2-107 nor § 54-7-202 prohibits a county from contracting with a private contractor to repair and preserve the roads described in questions 1-3, as long as the county has the authority to use its funds to repair and preserve the road in question.

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