

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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February 3, 2005

Opinion No. 05-016

Regulation of the Erection of Crosses on State Highway Rights-of-Way

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**QUESTION**

What agency of state and/or local government has jurisdiction to regulate the erection of crosses on the rights-of-way of state highways?

**OPINION**

The Tennessee Department of Transportation is responsible for the maintenance of public roads, streets, highways and bridges that are designated by the department as the state system of highways or the state system of interstate highways, and that department is authorized to remove personal property encroachments that have been erected or placed upon the rights-of-way of highways under its jurisdiction. It is the opinion of this office that neither the Tennessee Department of Transportation nor any other agency of state or local government has the express authority to grant a citizen permission to erect a cross or similar memorial upon a right-of-way of a state or interstate highway in Tennessee, but the Tennessee Department of Transportation does have express authority granted by Tenn. Code Ann. § 54-5-136 to remove and dispose of personal property encroachments, including crosses and similar memorials, that have been erected or placed upon the right-of-way of a state or interstate highway.

**ANALYSIS**

The Tennessee Department of Transportation (Department) has the power and duty to designate a system of state highways. Tenn. Code Ann. § 54-5-101. The Department is responsible for the maintenance of public roads, streets, highways and bridges or similar structures that are designated by the Department as the state system of highways or the state system of interstate highways. Tenn. Code Ann. § 54-1-126.

While there are various statutes that direct the Department to perform certain maintenance activities or grant the Department authority to delegate certain maintenance activities, the Tennessee General Assembly has not expressly authorized the Department or any other agency of state or local government to grant a citizen permission to erect a cross or similar memorial upon a right-of-way of a state or interstate highway in Tennessee.

However, the General Assembly has authorized the Department to remove and dispose of personal property encroachments that have been placed upon the right-of-way of a state or interstate highway. Tenn. Code Ann. § 54-5-136(a)(1). *Black's Law Dictionary* (8th ed., 2004) defines *encroachment* as “an infringement of another’s rights” and “an interference with or intrusion onto another’s property.” Property that has been erected or placed upon the right-of-way of a public road, street, highway or bridge without permission of the public is an encroachment upon public property.

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