



November 05, 2024

Duties-Highways

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

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Duties-Highways

Reference Number: CTAS-106

County highway commissions, often called road boards, are not required by general law. They are created by private act. Some road boards are popularly elected and some are appointed by the county legislative body. Private acts may grant road boards a role in budgeting and purchasing for the road department. Private acts cannot, however, authorize road boards to encroach upon the personnel policy powers or day-to-day administrative authority of the CAO over the personnel of the highway department or encroach upon other powers given to the CAO by the CUHL, such as authority over the county road system.

Personnel Management

Reference Number: CTAS-112

In the counties under the CUHL, the chief administrative officer is given the following authority under T.C.A. § 54-7-109:

It is the duty of the chief administrative officer to employ qualified administrative personnel as required to handle all administrative functions, including maintenance of financial records, inventory of equipment, supplies, and materials, preservation of maintenance records, maintenance of the official county road list, and all other functions necessary for the operation of the highway department.

The chief administrative officer is authorized to determine the total number of employees of the highway department, to determine personnel policies, hours of work, to establish job classifications, and to establish policies and wages within the classifications. The compensation established by the chief administrative officer should be in keeping with the compensation paid for similar services in the county and surrounding area.

This act clearly places authority over county highway department personnel with the chief administrative officer in CUHL counties. In other counties not under the CUHL, the private acts, county charter or metropolitan charter must be consulted to determine who has personnel authority.

The department head in all counties must be aware that the department's personnel policies must not conflict with the Federal Fair Labor Standards Act (FLSA) or the anti-discrimination laws. And of course, the number of personnel hired and their compensation is limited by the budget available. Department heads must also conform to T.C.A. §§ 5-23-101 through 5-23-112, which requires all county officials to establish certain basic personal policies, have the policies reviewed by an attorney and file the policies with the county clerk. Failure to do so will allow the county commission to create these policies for the official or, as an alternative, the official may choose to join in a county-wide policy.

Relocation of Utilities

Reference Number: CTAS-2464

Sometimes a county road project will require the relocation of utilities placed within the county right-of-way. Utilities can be required to move their facilities if relocation is necessary for the road project. The question often arises as to who is responsible for paying the costs associated with the utility relocation. Tennessee follows the common law rule that in the absence of a statute providing otherwise, public utilities must remove their facilities at their own expense *Pack v. Southern Bell Tel. & Tel. Co.*, 387 S.W.2d 789 (1965); *State v. Southern Bell Tel. & Tel. Co.*, 319 S.W.2d 90 (1958) (cert. denied by U.S. Supreme Court, *Memphis Transit Co v. Tennessee ex rel Leech*, 359 U.S. 1011 (1959)); *Bristol Tenn. Housing Authority v. Bristol Gas Corp.*, 407 S.W.2d 681 (1966); *Metropolitan Development and Housing Agency v. South Central Bell Telephone Co.*, 562 S.W.2d 438 (Tenn. App. 1978).

Statutory authority exists for the state to reimburse utilities for their costs in relocating facilities involved in projects undertaken by TDOT. T.C.A. § 54-5-804. This statute authorizes, but does not require, reimbursement. In contrast, T.C.A. § 13-20-303 requires municipalities, housing authorities and other public bodies of the state to reimburse utilities for relocation costs if the relocation is related to a redevelopment or urban renewal project. Aside from these two statutes, there does not appear to be any statutory authorization or requirement to reimburse utilities for relocation expenses.

Duties of the Chief Administrative Officer

Reference Number: CTAS-110

In counties under the CUHL, the chief administrative officer of the county highway department has general control over the location, relocation, construction, reconstruction, repair, and maintenance of the county road system as well as the other administrative tasks which are conferred by the general law, plus any other authority granted by private act which does not conflict with the general law. T.C.A. 54-7-109.

In many counties without a highway commission, a committee of the county legislative body is often formed as a liaison and advisory board, but in CUHL counties, this committee only recommends actions to the chief administrative officer and advises the county legislative body as a whole on road matters.

Supervision of Road Work

Reference Number: CTAS-107

In CUHL counties, the chief administrative officer is generally responsible for the use and control of all machinery, tools, supplies and material owned or used by the county in the construction, reconstruction, repair, and maintenance of county roads and bridges. T.C.A. § 54-7-112. Although not as clearly stated in the general law, it appears that the CUHL considers the chief administrative officer responsible for the operational control of all road and bridge work whether or not the chief administrative officer is in personal supervision of a particular project.

In keeping with this general operational supervision of the county roads and bridges, T.C.A. § 54-7-201 authorizes the chief administrative officer in CUHL counties to remove or cause to be removed any fence, gate, or other obstruction from the roads, bridges, and ditches of the county and to clean out and clear all ditches along or adjacent to the county roads. Any person who refuses to remove such an obstruction from a county right-of-way upon direction of the chief administrative officer is guilty of a misdemeanor.

Utilities that have the right or permission to place transmission lines, telephone or telegraph lines or poles on or along the right-of-way of any county road must do so under the direction of and with the permission of the chief administrative officer. T.C.A. § 54-7-201.

The chief administrative officer is empowered to employ legal counsel or solicit the use of counsel retained by the county to prosecute or defend litigation caused by or necessary to the operation of the county highway department. T.C.A. § 54-7-110.

Annual Work Program

Reference Number: CTAS-108

In CUHL counties, the chief administrative officer is required to prepare and submit to the county legislative body and to the State Department of Transportation an annual work program to be financed under the state aid highway system program. The priorities for proposed work should consider the degree of deficiencies in the structural condition, capacity, and safety of existing roadway, traffic volume, and the desirable level of service necessary for schools, religious institutions, industry, recreational facilities, and other major uses. T.C.A. § 54-7-111.

Duties of Popularly Elected Highway Commissions

Reference Number: CTAS-113

The authority given by private act to highway commissions must be consulted along with the CUHL to determine what powers such highway commissions may exercise. The private acts are effective with regard to the county highway commission and county highway department except where they conflict with the general law (particularly the CUHL). County highway officials in doubt as to the officer or commission with authority over a particular issue should consult with their own attorney, the county attorney, or the legal staff of The University of Tennessee's County Technical Assistance Service (CTAS).

Duties of Appointed Highway Commissions

Reference Number: CTAS-114

County highway commissions that are not popularly elected, such as those elected by the county legislative body, or appointed by the county mayor/executive, may serve as an advisory body to the chief administrative officer. Appointed highway commissions may play a role in budgeting in some counties. In determining the exact role of the appointed highway commission, the private act establishing duties of the appointed highway commission must be carefully studied in light of the CUHL and other general laws.

Inventory and Other Records

Reference Number: CTAS-109

The CUHL states that the chief administrative officer shall make or cause to be made a complete inventory of all machinery, equipment, tools, supplies and materials and file copies of the complete inventory with the county governing body and the chief executive officer of the county within sixty (60) days after taking office and thereafter a revised current inventory must be submitted by September 1 of each year effective the preceding July 1 of each year. This inventory also shall be maintained by the chief administrative officer and made available to the Comptroller for audit purposes. T.C.A. § 54-7-112.

All machinery, equipment, and tools are required to be plainly marked as the property of the county highway department. Each item must be numbered with the number entered on the inventory filed by the chief administrative officer. The county mayor/executive is obligated to examine these inventories for compliance with the law and may withhold funds from the county highway department until the chief administrative officer is in compliance. T.C.A. § 54-7-112.

Another type of record that the highway department must be careful with are personnel records. An employee's, including a former employee's, home telephone and personal cell phone numbers, bank account information, health savings account information, retirement account information, pension account information, Social Security number, residential address, driver's license information (except where driving is a part of the employee's job), and similar information for the employee's family and household members are confidential. Where this confidential information is part of a file or document that would otherwise be public information, such information shall be redacted if possible so that the public may still have access to the non-confidential portion of the file or document. T.C.A. § 10-7-504(f) & (g).

Purchasing-Highways

Reference Number: CTAS-115

The CUHL provides some rules in regard to purchasing, but it does not specify the purchasing agent for the county highway department. The CUHL statute on this subject, T.C.A. § 54-7-113(c)(3), states that the CUHL rules on purchasing found in this statute do not have the effect of repealing existing statutes, including private acts, which establish purchasing provisions for a county road department; however, no county road department is required to publicly advertise and competitively bid purchases of \$25,000 or less even if such bids are now required by public or private act.

Therefore, in CUHL counties, the purchasing agent for the department may be the chief administrative officer of the highway department or some other official under the provisions of a private act, the county purchasing agent under the optional 1957 County Purchasing Law (T.C.A. § 5-14-101 *et seq.*), or the Director of Finance under the County Financial Management System of 1981 (T.C.A. § 5-21-101 *et seq.*). However, in CUHL counties without specific purchasing policies under these other authorities, purchasing should be done in accordance with the procedures found in T.C.A. § 54-7-113(c).

The following purchasing procedures apply to all CUHL counties that have not established any other private act or general law purchasing procedure prior to July 1, 1980:

1. All purchases of \$25,000 or more must be publicly advertised and competitively bid;
2. Purchases of like items that individually cost less than \$25,000 but are customarily purchased in lots of two or more must be advertised and bid if the total purchase price of these items is expected to exceed \$25,000 during any fiscal year;
3. Repair of heavy road building machinery or other heavy machinery for which limited repair facilities are available need not be bid;
4. Purchases of any supplies, materials, or equipment for immediate delivery may be made without bidding in actual emergencies arising from unforeseen causes but such emergencies shall not include conditions arising from neglect or indifference in anticipating normal needs;
5. Leases or lease-purchase arrangements requiring payment of \$25,000 or more, or continuing for 90 days or more, must be advertised and competitively bid [Also, leases and lease-purchase agreements must be approved by the county legislative body. T.C.A. § 7-51-904]; and
6. All purchases costing less than \$25,000 may be made in the open market without newspaper notice, but, wherever possible, should be based upon at least three competitive bids.

T.C.A. § 54-7-113.

County highway departments are authorized to purchase used or secondhand articles from any federal, state or local governmental unit or agency without public advertisement and competitive bidding. They are also authorized to purchase used or secondhand articles from any private individual or entity without

public advertisement and competitive bidding as long as they document the general range of value of the item through a listing in a nationally recognized publication or through an appraisal by a licensed appraiser and the price is not more than five percent (5%) higher than the highest value of the documented range. T.C.A. § 12-3-1202. *See also* Attorney General Opinion 13-044 (6/10/13) (stating that the general range of value may not be documented using advertised prices found on the Internet).

County governments may purchase goods and services through a competitive reverse auction process that allows offerors to bid on specified goods or services electronically and adjust bid pricing during a specified time period in accordance with T.C.A. § 12-3-1208. Before initial use of a reverse auction, the county must file a plan with the Comptroller stating the technology to be used, whether a third party will conduct the auctions, describing the policies and procedures to be used, documenting internal controls, and stating whether additional operating resources will be needed and if so, indicating prior approval of the local governing body. Items and services that cannot be purchased through a reverse auction are: construction services (except maintenance, repairs, and renovations costing less than \$25,000); architectural or engineering services; new or unused motor vehicles (except school buses, garbage trucks, fire trucks, ambulances, and other special purpose vehicles); and new or unused construction equipment.

Counties are also authorized to enter into negotiated contracts, including joint contracts with other counties and/or municipalities, with a bank, investment bank or other similar financial institution to stabilize fuel expenses. Any contract entered into under this section must be for a term of no more than twenty-four (24) months. T.C.A. § 7-51-911.

The CUHL does not specify the officials who must sign warrants on the county highway fund for funds to be disbursed. This is a matter left to the private acts or local option laws and will vary from county to county. In some counties, co-signatures of the chief administrative officer and the county mayor/ executive are required, but in a large number of counties, the lone signature of the chief administrative officer of the highway department will be honored by the trustee.

Contracts with other Governmental Entities; No Private Use of Equipment

Reference Number: CTAS-116

T.C.A. § 54-7-202 generally prohibits the use of county highway department equipment or material for any purpose other than a county highway purpose. Work on private roads or for private purposes is strictly forbidden. Neither can rock, crushed stone, or any other road material be sold or given away. If any employee of the county road department uses any truck, equipment, or any rock or material for personal use or sells or gives anything belonging to the county away, the chief administrative officer is obligated to discharge the employee immediately. The county highway department cannot legally gravel churchyards, privately-owned graveyards, or privately-owned roads leading either to churchyards or to privately owned cemeteries. Tenn. Op. Atty. Gen. 84-300 (November 8, 1984).

The CUHL prohibits a county official from using county equipment to perform work on a private road or for private purposes even if the county is reimbursed for the work. T.C.A. § 54-7-202(c). The only exception regarding working on a private road exists when a local board of education or the appropriate postal authorities request in writing that the county highway department provide a route and a turnaround area. The county highway department is not required to honor such a request, but may do so if the county obtains the written permission of the owner of any property to be used for the postal service or school bus turnaround. The county highway department and the postal authority or board of education shall determine whether all or part of the cost of such work will be reimbursed to the county highway department before any work commences on the project. T.C.A. § 54-7-202(g).

The county legislative body may authorize the county road department to "perform work" for other governmental entities, provided that the cost of the projects are reimbursed to the county road department. T.C.A. § 54-7-202(d). For example, the county legislative body could authorize the county highway department to repair certain city streets for a certain fair cost, as this is to be "work performed." However, the rock could not be sold to the city for a certain sum. Likewise, the county legislative body could allow the county highway department to gravel a school parking lot, but would have to cause a transfer of funds from the school fund to the highway fund.

Cities and counties may perform certain tasks jointly by interlocal agreement. Joint purchases could be made by interlocal agreement to buy a greater quantity in an effort to lower costs.

County highway departments may perform work on private residential property on behalf of the county in order to clean up property after natural disasters pursuant to T.C.A. § 7-51-1601. The county legislative body must approve the work being done prior to it being performed by the highway department and the

highway department must be reimbursed for its costs associated with the clean up.

While TDOT is responsible for maintaining roads and bridges within state parks, counties may enter into agreements with TDOT to perform the maintenance work under T.C.A. § 54-1-126.

A county highway department may receive "gifts" of materials, property, services, funds or supplies for the benefit of the county highway department which can be used or disbursed in good faith in accordance with the terms of the donation. Any funds so received must be paid into the county trustee's office, credited to the county highway fund, and disbursed according to law as other funds of the county highway department. Also, the county highway department may adopt a policy to authorize private persons or entities to repair county roads to bring a road damaged by that person or entity up to the condition or standard of the road prior to the damage caused by the private person or entity. T.C.A. § 54-7-115.

Asphalt Plants

Reference Number: CTAS-117

Under a statute enacted in 2005 (2005 Public Chapter 344 amending T.C.A. § 12-8-101), counties and municipalities may individually or jointly own or operate a hot mix asphalt facility but only if certain conditions are met. A financial feasibility study, conducted jointly by all participating local governments, using factors specified by the statute must be completed and reviewed by a three-member feasibility oversight committee consisting of members named by the Comptroller, the Tennessee Road Builders Association, and the Tennessee County Highway Officials Association. The completed study must be filed with the Comptroller and the county mayor/executive and be available for public inspection. The committee's function is to review the feasibility study to determine if all appropriate costs are included and publically disclosed. The committee either approves the study or disapproves the study if it is deemed incomplete and lacks substantial information to provide an accurate estimate of the costs and benefits of owning and operating a plant. The committee is to itemize any deficiencies and return the study to the local government or governments for modification and resubmission. If after a second submission a majority of the committee determines the study to be incomplete, it will be forwarded to the county or municipal governing body with a negative recommendation within thirty (30) days after the meeting. Any minority report must also be forwarded. The county legislative body or municipal governing body then determines whether or not to approve or deny any action required to acquire an asphalt facility. The resolution or ordinance requires a two-thirds majority vote before any public funds may be expended on a hot mix asphalt facility. Asphalt produced from such a public facility must be used exclusively for paving public streets, roads or highways under control of the unit of local government that owns the plant. Asphalt facilities owned by local governments on March 29, 1976, and all metropolitan governments are exempt from the additional requirements of 2005 Public Chapter 344. All local governments acting under the new public chapter that own and operate an asphalt facility are required to solicit bids annually for hot mix asphalt products but may reject any and all bids. T.C.A. § 12-8-101.

All counties and municipalities that did not own or operate an aggregate facility for the production of crushed limestone, commercial lime, agricultural lime, sand, gravel, or any other product resulting from the processing of aggregate on June 7, 2005, are prohibited from acquiring such a facility unless the county or municipality prepares a financial feasibility study comparable to the one required for asphalt facilities and a review procedure substantially similar to the one for asphalt facilities is used. The acquisition of such an aggregate facility also requires a two-thirds majority vote of the county legislative body or municipal governing body as appropriate. A local government that owns and operates an aggregate facility may transfer materials to another entity of that local government only if a study has been completed to determine the actual costs of producing that material and reimbursement of actual costs is made. Otherwise, it is unlawful for crushed limestone, commercial lime, agricultural lime, gravel, or any other product resulting from processing of stone, produced in whole or in part by any governmentally owned or operated plant, quarry, crusher, or stone processing plant to be sold, traded, bartered, lent, or given away. T.C.A. § 12-8-101. A violation of this section results in a Class C misdemeanor. T.C.A. § 12-8-102. However, counties may sell agricultural lime to farmers for their own farming activity. T.C.A. § 12-8-103.

County Roads

Reference Number: CTAS-840

County Public Roads v. Private Roads

Reference Number: CTAS-841

One of the main duties of the chief administrative officer of county highways is to exercise supervision

over the construction, repair and maintenance of county roads. T.C.A. § 54-7-109. The chief administrative officer must be careful not to work on private roads. T.C.A. § 54-7-202 forbids the use of any county highway materials or equipment to improve or repair private roads, with the limited exception for school bus and postal vehicle turnarounds. A chief administrative officer who authorizes or knowingly permits county equipment to be used for private purposes is guilty of a misdemeanor. T.C.A. § 54-7-202.

All roads running through a county are not county public roads. Some are private roads, others are state highways or city streets. Private roads are the most difficult to distinguish from county public roads. Private roads are generally one of two types. First, a private road may be one used by only one or a few property owners, such as a driveway; or second, it may be a road which the landowner allows the general public to use but which has never been formally accepted by the county legislative body as a county road, or which the landowner has never given the public any rights, either express or implied.

A public highway or road is "such a passageway as any and all members of the public have an absolute right to use as distinguished from a permissive privilege of using [the] same." Standard Life Ins. Co. v. Hughes, 315 S.W.2d 239, 242 (1958). In this case, the court stated that a road may become public in one of the following ways:

1. Act of a public authority.
2. Express dedication by the owner.
3. Implied dedication--Use and acceptance by the public with the intention of the owner that the use become public.
4. Adverse use continuing for twenty (20) years, creating a prescriptive right.

Accordingly, unless the public has acquired an absolute right to use the road in one of the ways mentioned above, any public use is either by permission or license, not by right, and the road remains a private road.

Classification of County Public Roads

Reference Number: CTAS-842

According to T.C.A. § 54-10-103, the county legislative body is charged with classifying public roads. Before the county legislative body classifies a public road for the county road system, the chief administrative officer of the county highway department is required to submit a detailed listing of all county roads to the legislative body. The listing should include a summary of all changes from the road list previously submitted. More detail about the contents of these reports is discussed below. The chief administrative officer is also to include any suggestions and recommendations for changing road classifications with this report. This section (T.C.A. § 54-10-103) along with several other sections and court cases, concludes that the county legislative body is the proper entity to designate or accept roads as county roads. A road may be a "public" road without being designated as a "county" road by the legislative body. County highway officials may work only on county public roads. They do not have the authority to decide which roads will be county roads. They may only make recommendations to the county legislative body about which roads should be county roads.

The Tennessee Code provides a means by which county officials and any interested citizens can determine exactly which stretches of road are county roads. After receiving reports and recommendations of the highway superintendent, the county legislative body is required to make and maintain a list of all county roads, classify the roads according to width, and then file that list in the county clerk's office. Those code sections relating to the road lists are very old and some counties have not kept an up-to-date road list. In the past, there was less need for the road list, but since the passage of the County Uniform Highway Law (CUHL), that list has become vital for the protection of highway officials. With an up-to-date road list on file, highway officials will know exactly which roads they can maintain and which roads they cannot legally work on. Interested citizens will also have a means of finding out which roads may be maintained by the county. The road list should be amended on an on-going basis throughout the year to ensure it accurately reflects the current inventory of county roads. T.C.A. § 54-10-103.

One major purpose of the road list is to protect the highway officials. For that reason, it is very important not to begin work on a road until it has been officially classified by the legislative body and added to the county road list. In this regard, there may be some confusion in counties that have a planning commission. In such counties, road approval by a planning commission is one step in the acceptance process, but that alone is not enough to make a road a county road. A road is not a county road until the county legislative body has formally classified it, regardless of the action taken by the planning commission. For their own protection, highway officials should not begin work on any road approved by the planning commission until it has also been accepted through the classification process by the county legislative body. T.C.A. § 13-3-406.

The county legislative body is responsible for updating and maintaining the county road list, based on the information and recommendations of the chief administrative officer. The road list is not extremely difficult to compile. It should contain eight (8) items of information regarding each road on the list:

1. Type of road (county or state-aid road)
2. State-aid road description (only for county roads included in the state-aid road system)
3. Local name of road
4. Beginning and ending point of road (describe by reference to geographical features)
5. Miles (length of road to nearest 1/10 mile)
6. Class (classify according to width as set out in T.C.A. §§ 54-10-103 and 54-10-104)
7. Right of way width (in feet)
8. Roadbed width (in feet)

T.C.A. §§ 54-10-103, 54-10-104.

Frequently, only a portion of a total road may be classified as a county road. In such cases, the beginning and ending points, total miles, and other road list items should refer only to the part of the road that is a county road. As was mentioned above, the road list provided to the county legislative body should include a summary of changes to the road list. The summary shall provide the road name, the date the change in classification was approved and the reason for the change.

Opening, Changing and Closing County Roads

Reference Number: CTAS-843

The statutory law regarding acceptance of new county roads and the closure of existing county roads is very confusing and the county attorney should be consulted to determine the proper procedure to follow in the particular county. However, some general observations may be helpful. The CUHL must be reconciled to the greatest degree possible with the old general law on opening, closing and changing roads found in T.C.A., Title 54, Chapter 10, as well as other general law such as the general law granting certain powers to regional planning commissions and the state department of transportation in some instances. In 1995 the legislature passed a simpler alternative method of closing roads.

The Attorney General has opined that in counties under the CUHL, the CAO of the county highway department, or the elected highway commission or board in the counties with such an elected board (if a private act grants general control of the county road system to the elected board), has general control of the county highway system and this includes approving the acceptance of a new road, changing the route of an existing road or closing an existing county road before such a change may take place. *Op. Tenn. Atty. Gen. U89-10 (January 31, 1989)* (It should be noted that since that opinion was issued, the CUHL was amended to delete references to such authority held by elected highway commissions or boards.) However, this is not the only step involved. The county legislative body must pass on additions or deletions to the classifications of county roads in the county road list after receiving the recommendation of the CAO. T.C.A. § 54-10-103. However, if a road has obtained a public character under one of the methods in the *Standard Life Ins. Co. v. Hughes* case, it is doubtful whether the CAO or elected highway board may prevent the county legislative body from adding such a road to the county road list or prevent a court from declaring the road public and part of the county road system. *Hackett v. Smith County*, 807 S.W.2d 695 (Tenn. Ct. App. 1990); *Rogers v. Sain*, 679 S.W.2d 450 (Tenn. Ct. App. 1984).

One aspect of the *Hackett v. Smith County* case which has become significant due to later decisions limiting the application of the case is the fact that the county road commissioner certified on the plats that the streets, utilities and other improvements were installed in an acceptable manner according to county specifications and that a bond had been posted to insure the completion of all required improvements. In December 2003, the Court of Appeals decided a similar case coming out of Franklin County. In *Shahan v. Franklin County*, 2003 WL 23093836 (Tenn. Ct. App.), a developer and residents of a subdivision sued the county over the maintenance of roads within the subdivision. The county declined an offered dedication of the roads and further denied building permits for additional structures in the subdivision due to the inadequacy of the roads. At that point, the developer and residents sought a declaration of responsibility for road maintenance. The developer asserted that, as in the *Hackett* case, there had been an implied dedication accepted through public use. Although the court agreed that there was evidence of public use of the roads, it held that the doctrine of implied dedication did not apply because the roads were in an unapproved subdivision.

The court did recognize the *Hackett* case, however, and described it as the proper limited application of the doctrine of implied acceptance of a dedication in the subdivision setting. The court ruled that the

doctrine may be invoked in regards to subdivision property when a local government has declined or refused to accept property after a developer has complied with all applicable regulations. Because of this case, it is more vital than ever for counties to have established subdivision regulations which include thorough specifications for roads and streets. Reading Hackett and Shahan together, subdivision roads can be expected to become the responsibility of the county unless it can be demonstrated that the developer failed to comply with minimum road standards.

If bonds are issued for construction of county roads or bridges, the approval of the CAO, the county legislative body and the Tennessee department of transportation must be obtained. T.C.A. §§ 54-9-139, 54-9-202. Also, the regional planning commission has authority to approve plats of subdivisions which may contain plans for roads or streets and may set standards for such roads or streets in the subdivision. T.C.A. §§ 13-3-401, 13-3-402, 13-3-406. However, the statutes specifically state that the approval of a plat by the regional planning commission shall not be deemed to constitute or affect an acceptance by any county or by the public of the dedication of any road or other ground shown upon a plat. T.C.A. § 13-3-405; Foley v. Hamilton, 659 S.W.2d 356, 360 (1983).

The old general law found in T.C.A., Title 54, Chapter 10, Part 2, dealing with petitions to open, change or close public roads must be considered when dealing with certain changes to the county highway system. As stated earlier, this old law must be reconciled to the extent possible with the newer statutes found in the CUHL. For example, before a road is closed, adjacent landowners or those controlling the land touched by the proposed road must be notified. T.C.A. §§ 54-10-202, 54-10-203. Since these changes may involve damages to property owners, a jury of view is provided to determine if damages exist and to what extent. T.C.A. § 54-10-204. The exact workings of the petition process, jury of view, any necessary hearings and other procedural matters should be worked out with the consultation of the county attorney as to reconcile the conflicting statutes to the greatest extent possible.

The basic problem with the general law, found in T.C.A. §§ 54-10-201 *et seq.*, is that it was adopted in 1891 when all counties were required to have highway commissioners who supervised all road work in their respective districts. The law requiring these commissioners was repealed in 1963, but the provisions for accepting and closing county roads were not amended to reflect this change. Therefore, these sections still refer to the authority of highway commissioners within their respective districts. Only one or two counties in the state still have district highway commissioners as contemplated by this statute. In spite of these difficulties, the procedure established under these statutes was referenced in a 1963 court case and appears to be applicable to some extent. The procedures of this chapter may be summarized as follows:

1. A resident of the county may make an application to the highway commissioner of the district through which the road runs to open, change, or close a road through a signed petition. T.C.A. § 54-10-201.
2. A highway commissioner may, without a petition, proceed to open, change, or close a road which is deemed necessary for the public interest. T.C.A. § 54-10-213.
3. Before a road can be opened, closed, or changed, at least five (5) days' notice must be given to all interested parties of the time the road is to be changed. Landowners and those controlling land touched by the road are interested parties. T.C.A. § 54-10-202.
4. Once notice has been given, the highway commissioner in whose district the road runs will pick two other freeholders of the same district who have never been consulted on the issue and who will take an oath of impartiality and these persons will constitute a jury of view. T.C.A. § 54-10-204.
5. The jury of view will assess the damages to any property affected by the closing of the road. T.C.A. § 54-10-205.
6. Any aggrieved party may appeal the action of the jury of view to the Court of General Sessions and from there to circuit and appellate courts. In case of an appeal, the jury of view will forward all the papers in the case to the General Sessions Court. T.C.A. § 54-10-206.

Some counties use the highway committee of the county legislative body to carry out this procedure, with the full membership of the legislative body approving or rejecting the actions of the committee. However, it is noteworthy that the Attorney General, in Opinion No. U89-10, dated January 31, 1989, although stating that the provisions of Chapters 7 and 10 (CUHL), Title 54, T.C.A., must be read together, states that most of the duties to open or close a county road rests with the chief administrative officer of the county highway department where the county does not have a popularly elected highway commission, because of the more recent passage of the CUHL, which will supersede the older law when they are in conflict. However, the Attorney General opined that Chapters 7 and 10 of Title 54, T.C.A., must be reconciled whenever possible. Therefore, the procedure to be followed when opening or closing county

roads remains confusing under the current law.

Alternative Procedure for Opening, Changing and Closing County Roads

Reference Number: CTAS-844

There is a local option law found at T.C.A. § 54-10-216 which provides for a much easier process for opening, changing and closing county roads. The alternative procedure must be adopted by a two-thirds majority vote of the county legislative body to become effective in a given county. Counties operating under this section have the following method available to them for opening, changing and closing county roads:

1. An application to open, change, or close a designated public road within the county is made in writing to the chief administrative officer.
2. Upon receiving an application, the chief administrative officer must give notice of the application to all interested parties. Interested parties include landowners and those controlling land touched by the road subject to the application.
3. The chief administrative officer must then make a recommendation to the regional planning commission, or a committee of the county legislative body if no such regional planning commission exists, regarding whether the public road should be opened, changed, or closed.
4. After receiving the recommendation of the chief administrative officer, the regional planning commission or committee of the county legislative body must make its recommendation to the county legislative body and must attach the recommendation of the chief administrative officer. Before making any recommendation with respect to opening, changing, or closing a road, the regional planning commission, or committee of the county legislative body, must provide notice of the action either by written notice mailed to affected property owners or by notice advertised in a newspaper of general circulation in the county not less than fourteen (14) days before the recommendation is made.
5. After receiving the required recommendations, the county legislative body may, by resolution adopted by a majority of its members, order the opening, changing, or closure of the public road.

If a county chooses to operate under this alternative procedure and does not have a regional planning commission, a standing committee of the county legislative body will perform the functions of the planning commission. The standing committee must be comprised of five (5) county legislative body members selected by the chair of the county legislative body each year on or before September 1. The committee will only be formed if no regional planning commission exists to perform the functions of the planning commission under the alternative procedure law and will operate for the sole purpose of considering applications to open, change, or close a county road.

Adoption of the alternative procedure does not preclude interested parties from seeking damages arising from the opening, changing, or closing of a county road to which they are otherwise entitled under the law.

As used in T.C.A. § 54-10-216, "change", with respect to the changing of public roads, does not include any proposed or actual reduction of the maximum gross weight limits of freight motor vehicles operating over public roads.

Weight Limits

Reference Number: CTAS-831

The county may provide for a system whereby overweight or oversize vehicles may travel on county roads after obtaining a permit to so travel. This permit system must be in conformity with rules and regulations promulgated by the commissioner of transportation.

State Highways - Weight Limits

Reference Number: CTAS-1840

Although county officials have certain powers with regard to weight limits on county roads, this authority is derived from authority possessed by the State Department of Transportation. The ability to regulate weight limits on county roads must fit within the overall scheme of state laws and regulations. For that reason, the following is a summary of the power and authority exercised by the Department of Transportation.

T.C.A. § 55-7-101 - Operation of Vehicles Injurious to Highways Must Conform to Regulations -- No vehicle, truck, engine, or tractor of any kind, whether such vehicle be propelled by steam, gasoline, or otherwise, shall be permitted to operate upon any street, road, highway, or other public thoroughfare which, either by reason of its weight or the character of its wheels, will materially injure the surface or foundation of such street, road, highway, public thoroughfare, including the bridges thereon, unless and until the owner or operator of such vehicle of any kind shall have complied with such rules and regulations as may be prescribed by the departments of transportation and safety relating to the use of such highways by such vehicles.

Statutes regulating the size, weight, and load of motor vehicles traveling on Tennessee highways are codified as Title 55, Sections 55-7-101 -- 55-7-209.

Section 55-7-103 describes when maximum weight limits may be lowered:

Maximum Weight May be Lowered, When - Notices to be Posted -- (a) From January 15 to April 15 of each year, and at any other time by reason of repairs, weather conditions, or recent construction of the road, the maximum weight herein permitted would damage the road, the [state] department of transportation may specify any lower maximum weight which, in the discretion of such department, is necessary in order to protect such streets, roads, highways, or other public thoroughfares from unnecessary injury or damage.

(b) Notice of such reduction in weight load shall be given by the department by posters posted at the termini of the road and all detours for one (1) week before such reduction of load becomes effective.

Violation of regulations contained in Sections 55-7-101--55-7-103 is a Class C misdemeanor and, upon conviction, subject to imprisonment for not greater than thirty (30) days or to a fine of not more than fifty dollars (\$50.00). (Sections 55-7-104, 40-35-110, 40-35-111) In addition, it is illegal to move an overloaded vehicle until the load has been reduced to bring it into legal compliance, or a special permit obtained. Failure to comply is a Class C misdemeanor.

Sections 55-7-107--55-7-109 relate to securing of loads of vehicles hauling timber, pulpwood, logs (T.C.A. § 55-7-107) and loose material hauled in an open truck bed (T.C.A. § 55-7-109), and penalties for violation of these sections. Sections 55-7-201 and 55-7-202 outline maximum length, width and height regulations.

MAXIMUM WEIGHT LIMITS

Section 55-7-203 sets out weight limits currently established for public highways in Tennessee, as follows:

Gross Maximum Weight Limit 80,000 lbs.

Single Axles 20,000

Tandem Axles 34,000

The maximum weight limits for vehicles equipped with emissions-reduction technology may be increased by the weight of that technology up to 550 lbs. or the maximum amount allowed by federal law.

Section 55-7-203(c) sets out special provisions for nondivisible overweight loads.

Weight limits for the interstate system are slightly different than those outlined above for state highways. (For a complete explanation of weight limits, please refer to Section 55-7-203).

In addition, Section 55-7-203(b)(7), relates to allowances for error on logging trucks, farm trucks, and certain other vehicles:

(b)(7) For purposes of enforcement of this section, weight restrictions shall be deemed to have a margin of error of ten percent (10%) of the true gross or axle weight for all logging, sand, coal, clay, shale, phosphate, solid waste, recovered materials, farm trucks and machinery trucks when being operated over the state highway system other than the portion designated as the interstate system.

The various types of trucks listed in that statute are defined specifically in the law. The application of the margin of error rule to trucks hauling certain types of materials (machinery, sand) is limited to specific circumstances or distances.

OVERWEIGHT, OVERSIZE, OVERLENGTH LOADS

The law not only sets the maximum axle and gross weight limits allowed on Tennessee highways, but also authorizes that "...the commissioner of transportation shall have the authority to grant special permits for the movements of freight motor vehicles carrying gross weights in excess of the gross weights set forth in Section 55-7-203, or dimensions in excess of the dimensions set forth in Sections 55-7-201 and 55-7-202, and shall charge a fee in accordance with the schedules contained in subsection (h) for the issuance of a permit for each movement." (T.C.A. § 55-7-205(a)) These special permit fees are charged in accordance with the following schedules set out in Section 55-7-205 (h):

Excessive Width:

Not More Than 14 Feet \$ 20.00

Over 14 Feet - Not More Than 16 \$ 30.00

Over 16 Feet -- \$ 30.00 plus \$ 5.00 for each additional foot or fraction thereof greater than 16 feet.

Houseboats over 17 feet – two thousand five hundred dollars (\$2,500), plus one hundred dollars (\$100) for each additional inch or fraction thereof greater than seventeen feet (17').

Excessive Height or Length: \$ 20.00

Excessive Weight: \$ 20.00 plus \$.06/Ton per Mile

Evaluation of Bridges and Similar Structures:

> Movements weighing over 165,000 but not more than 250,000 pounds: \$ 100.00

> Movements weighing over 250,000 but not more than 500,000 pounds: \$ 300.00

> Movements weighing over 500,000 pounds: Actual Cost

A permit shall be available from the department of transportation on an annual basis for overdimensional and/or overweight vehicles except for those vehicles specifically permitted and used to transport cotton seed modules, overdimensional boats used for noncommercial purposes and mobile homes.

EXCEPTIONS TO SIZE AND WEIGHT PROVISIONS

Section 55-7-205 (a) allows certain exceptions pertaining to size and/or weight limits as follow:

Farm Equipment:

....It is not necessary to obtain a permit nor is it unlawful to move any vehicle or machinery in excess of the maximum weight and height....used for normal farm purposes only where the same is hauled on a farm truck....or such vehicle or machinery is being transported by a farm machinery equipment dealer or repairman in making a delivery thereof of new or used equipment or machinery to the farm of the purchaser thereof, or in making a pickup and delivery of such farm machinery or equipment from the farm to a shop of a farm equipment dealer or repairman for repairs and return to the farm, and such movement is performed during daylight hours within a radius of fifty (50) miles of the point of origin thereof and no part of such movement is upon any highway designated and known as a part of the national system of interstate and defense highways of any fully controlled access highway facility.

Utility Companies:

No fee authorized by this section shall be charged for the issuance or renewal of such special permits to retail electric service owned by a municipality or electric cooperative corporation, or to any telephone company or to contractors when they are moving utility poles doing work for such utilities. Upon compliance with the appropriate rules and regulations, such electric services, telephone companies, and their contractors when they are moving utility poles may be issued special permits for stated periods not exceeding one (1) year.

PENALTIES FOR VIOLATIONS

Under T.C.A. § 55-7-206, each violation of Sections 55-7-201--55-7-203, each violation of restrictions on the maximum gross weight of freight motor vehicles adopted by the commissioner of transportation (Section 55-7-205), and each violation of rules and regulations adopted by the commissioner of safety under that section, is a Class C misdemeanor. In addition, when any freight motor vehicle is found to be in violation of only T.C.A. § 55-7-203(b)(3), a fine of twenty-five (\$25.00) is to be imposed. (Section 55-7-206 (d)(1)).

County Roads - Weight Limits

Reference Number: CTAS-1847

COUNTY OFFICIALS' AUTHORITY - OVERWEIGHT, OVERSIZE VEHICLES

Section 55-7-205(a)(8)(B) provides that the county legislative body shall have the same authority to lower weight limits as the commissioner of transportation as it relates to county roads:

The county legislative body shall have the same authority as to county roads; provided, however, that any proposed reduction below the weight limits set by the commissioner pursuant to this section shall require a two-thirds (2/3) vote of the county legislative body and shall be based upon the same criteria as used by the commissioner.

This is the authority to reduce the maximum gross weight of freight motor vehicles operating over lateral highways and secondary roads where through weakness of structure in either the surface of the road or of bridges, the maximum loads provided by law, injure or damage such roads or bridges. T.C.A.

55-7-205(a). Whereas the regular maximum weights for freight motor vehicles are set on a weight per axle basis, with the gross maximum weight limit being 80,000 lbs., the lower weight limits may be a certain gross amount per vehicle.

As lowering weight limits on county roads is done by county legislative body vote, violations of the weight limits could subject the offender to a civil monetary penalty of up to \$500 for violation of rules and regulations of the county if so specified by the resolution of the county legislative body. (Section 5-1-121). Subsequent court decisions probably place limits on this monetary penalty. See Chattanooga v. Davis, 54 S.W.3d 248 (Tenn. 2001). According to the Tennessee Supreme Court in that case, a punitive fine levied by a local government cannot exceed \$50 unless the defendant is allowed to have a jury trial. Higher fines could be enforced if they are remedial in nature rather than punitive, but this distinction is difficult to make. Therefore, a county should generally limit monetary penalties to \$50 or less per violation. Penalty provisions of any regulations should be carefully considered by the county attorney.

Furthermore, the weight limits that are set should be reasonable and based on the best information available regarding the weight that the road or bridge will withstand. The Department of Transportation can assist highway departments by conducting engineering studies that can be used to support the need for reduced weight limits.

Signs should be placed at appropriate places along the road or prior to entry upon a bridge to give the public reasonable notice of the lowered weight limits. In addition, appropriate county officials are also authorized to issue special permits for transporting oversize and/or overweight loads on county roads in conformity with rules and regulations prescribed by the commissioner of transportation.

Underground Utilities Damage Prevention Act

Reference Number: CTAS-2201

The Underground Utilities Damage Prevention Act, found at Title 65, Chapter 31, Part 1, was substantially revised in 2015. The revised law establishes a system of civil, rather than criminal, enforcement for failing to follow the statutory procedures for notifying the Tennessee One-Call system prior to engaging in excavation activities. The new law does carve out an exception for "routine road maintenance activities."

If the work of the highway department falls within this exception, the department is not statutorily required to notify the One-Call system. Failing to provide notification, however, could create safety hazards and expose the county to liability. Penalties for violations of the act include training and civil monetary penalties of up to \$15,000 per incident. The act does provide that local governments will not be fined unless they engage in a pattern of willful noncompliance. The act also establishes an enforcement board and an executive committee, which is responsible for levying the penalties.

Vandalism

Reference Number: CTAS-2178

Under T.C.A. 54-7-207, it is an offense for any person who is not authorized to construct or repair a county highway structure to knowingly carve upon, write, paint or otherwise mark upon, deface, rearrange, or alter any county highway structure. It is also an offense for any person who is not authorized to construct or repair a county highway structure to knowingly, in any manner, destroy, damage, knock down, mutilate, mar, steal or remove any county highway structure. "County highway structure" is defined as "any county highway, highway facility, building, bridge, overpass, tunnel, barricade, fence, wall, traffic control device, right-of-way, sign or marker of any nature whatsoever erected upon or maintained within or adjacent to a county highway or the county highway right-of-way."

Violations of this section are Class A misdemeanors. Class A misdemeanors carry a sentence of not greater than eleven (11) months, twenty-nine (29) days in jail or a fine not to exceed two thousand five hundred dollars (\$2,500), or both. Criminal actions are to be brought by the district attorney general of the judicial district in which the damage occurred.

Section 54-7-207 also creates a civil cause of action for damage caused by violations of that section. This allows counties to seek restitution for damage to their roads. Civil actions are to be brought by the county attorney or an attorney employed by the chief administrative officer of the county highway department.

This section also provides for a \$250 reward for persons who report information to a law enforcement officer that leads to the apprehension and conviction of a person for a violation. The reward money comes from the fines collected under the section. The proceeds from the fines are to be collected by the court clerks and then deposited in a dedicated county fund. The fund shall not revert to the county general fund at the end of a fiscal year but shall remain for the vandalism enforcement rewards. Excess funds, if any, may be expended for litter control programs on adoption of an appropriate resolution by the county legislative body.

This section applies to all counties.

Public Fords, Ferries and Bridges

Reference Number: CTAS-846

Counties may supervise fords, ferries and bridges. T.C.A. § 54-11-101 *et seq.* Additionally, counties may issue bonds for the construction of county highways, roads and bridges and pledge up to 50% of the state-aid grant funds derived from the state gasoline tax for the retirement of such bonds. However, state funds used in matching federal funds may not be included in this amount. T.C.A. § 54-9-201. The legislative body may build a bridge or bridges over and across any stream or river running through the county. T.C.A. § 54-11-207. The CAO has the authority to temporarily close roads or bridges as necessary for new construction or repair. Op. Tenn. Atty. Gen. 81-618 (December 7, 1981).

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