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County Public Roads v. Private Roads

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.

Sincerely,

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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.

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