



A SELECTED READING

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Streets, Alleys and Sidewalks

A way over land set apart for travel by the public in a city, town or village is usually designated as a street. The term “street,” in a legal sense, usually includes all parts of the way – the roadway, the gutters and the sidewalks. Streets are public ways and for travel by the public.

Elements of Streets

Three elements constitute a street: (a) the surface, (b) as much beneath the surface as is necessary to provide a foundation for the surface and for water mains, gas lines, sewer lines and other needful utilities, and (c) enough above the surface to afford clearance for traffic. A bridge over a stream, ditch or channel is part of the street.

The term “highway” is a generic name for all kinds of ways and generally is broad enough, in statutory usage, to include streets, although statutes may be written to exclude city or town streets.

An “alley” is a passageway, usually somewhat narrow, between two parallel streets and usually at the rear of the properties facing the street. Alleys are primarily for the convenience of the abutting property owners, but the public is interested in them for access and utility installations. Alleys may be public or private, the same as streets but for the purposes of this article, only public alleys will be discussed. Normally, alleys are dedicated in plats and are under control of municipal authorities. The law prevailing as to streets is applicable to them.

A “sidewalk,” popularly speaking, is that part of the street, on the side thereof, intended for use by pedestrians. Alabama statutes authorize cities and towns to control use of sidewalks. *See*, Section 11-49-2 Code of Alabama 1975. “Street” was defined in *Cloverdale Homes v. Town of Cloverdale*, 62 So. 712 (Ala. 1913), as:

“The word ‘street’ means ‘the surface;’ it means the whole surface and so much of the depth as is or can be used not unfairly for the ordinary purpose of a street. It comprises a depth which enables the original authority to do that which is done in every street, namely, to raise the street and to lay down sewers, for at the present day there can be no street in a town without sewers, and also for the purpose of laying down gas and water pipes. Street, therefore, in my opinion, includes the surface and so much of the depth as may not unfairly be used as streets are used.”

In *Williams v. Nearen*, 540 So.2d 1371 (Ala. 1989), the court held that in determining the width of a public road, consideration should be given to the safety and convenience of the traveling public as well as the need for repairs and improvements.

Duty of Municipalities

This article discusses only streets that are properly dedicated public ways. See the article in this publication titled “Dedication of Lands” for more information. Section 11-47-190, Code of Alabama 1975, reads in pertinent part:

“No city or town shall be liable for damages for injury done to or wrong suffered ... unless the said injury or wrong was done or suffered through the neglect or carelessness or failure to remedy some defect in the streets, alleys, public ways or buildings after the same had been called to the attention of the council or other governing body or after the same had existed for such an unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the council or other governing body ...”

Alabama courts have consistently construed this section as imposing an affirmative duty on a municipality to maintain streets in a reasonably safe condition. In *Florence v. Stack*, 155 So.2d 324 (Ala. 1963), Stack sued the city of Florence for personal injuries allegedly received when a two-wheeled motor scooter he was riding ran into a “defect, hole, cut, ditch or excavation” in the paved surface of a public street. The basic question presented on appeal was whether a city’s duty to

maintain its streets is different with respect to a two-wheeled motor scooter than it is in respect to a four-wheeled motor vehicle. The decision in this case contains a good summary of the law:

“A municipality’s duty with respect to maintenance of its streets for travel is well-established in this State. In general terms, the liability of a municipality in a suit of this kind is governed by the duty and obligation to exercise ordinary and reasonable care to keep its streets and sidewalks in a reasonably safe condition for travel. This imposition does not make the municipality a guarantor of the safe and unharmed travel to the public. The duty is based on the responsibility and accountability of the city to remedy such defects upon receiving actual notice, or after the same has remained for such length of time and under such conditions and circumstances that the law will infer that the defect ought to have been discovered and remedied. The general rule is that public ways for their entire length and width should be reasonably safe for uses consistent with the reason for their establishment and existence. But this general rule is subject to the necessary qualification that the municipal authorities may, in the exercise of a sound and reasonable judgment, fairly and with due regard to the public needs and welfare apportion the surface of public streets to the use of vehicles, to the use of pedestrians, and to ornamentation and beneficial uses resulting from parkways. It is the duty of a municipality to keep its public streets in a reasonably safe condition for travel by night as well as by day, and this duty extends to the entire width of the street. The duty of a city to use due care to keep its streets reasonably safe for ordinary travel is not controlled by the manner in which the defect arose, or by whom it was created. It is well settled that persons using a public street have a right to presume, and to act on the presumption, that the way is reasonably safe for ordinary travel, whether by day or night.”

The responsibility to control, manage, supervise, regulate, repair, maintain, and improve public streets in newly-annexed areas is governed by Section 11-49-80, Code of Alabama 1975, as amended.

Road Builder Liability

During and at the end of a road or bridge construction project there is always an issue of liability between the municipality contracting for the project and the contractor. In 2023, the Legislature passed Act 2023-316 in an attempt to resolve this issue. Pursuant to Act 2023-316, a municipality assumes responsibility to maintain a recently constructed road or bridge at the conclusion of the project. The conclusion of the project is the earlier of the following:

1. The date that the municipality notifies the contractor, in writing, that the municipality has assumed maintenance responsibilities for the project.
2. The date following the expiration of 45 days after the contractor provides, by certified mail return receipt requested, notice of presumptive conclusion of the project to the municipality and the municipality fails to respond.
3. The date following the expiration of days after the contractor has completed the advertising requirements of Title 39 and the municipality has made the final payment to the contractor.

Despite the municipality assuming responsibility to maintain the newly constructed road or bridge, the contractor remains liable for (1) any failure by the contractor to follow the plans and specifications resulting in a dangerous condition and (2) any latent defect which creates a dangerous condition that is a result of the work of the contractor. Ala. Code Section 6-5-702 (1975).

Act 2023-316 further creates a rebuttable presumption in favor of municipalities and road contractors in lawsuits arising from any negligent act or omission in the construction or maintenance of a public road. The rebuttable presumption is that the conduct of an operator of a vehicle who is texting and driving, driving under the influence or going 25 miles per hour over the speed limit is the proximate cause of any injury alleged to be suffered by the negligent construction and/or maintenance of the public road. The presumption can only be overcome if the plaintiff establishes by a preponderance of the evidence, that the prohibited conduct was not the proximate cause of the injury. The Act also provides minimum pleading requirements for complaints alleging negligent maintenance or construction of public roads promulgated in Ala. Code Section 6-5-703 (1975). If the pleading requirements are not met, the Act explicitly states the complaint is subject to dismissal for failure to state a claim upon which relief may be granted.

Bicycles

In *Hill v. Reaves*, 139 So. 263 (Ala. 1932), the city of Mobile was sued for injuries a bike rider sustained from a plant which overhung the sidewalk. The court denied recovery, stating that there was no duty owed to the plaintiff in this case. The court found that the proper place for operation of all vehicles designed for speed or draft is in “the speedway of the street, and

not upon the sidewalk which is set apart for the use of pedestrians, vehicles for cripples, invalids and baby buggies, propelled by a pedestrian; that a bicycle is a 'vehicle' designed for speed, and its proper place is upon the highway or street proper."

In *City of Florence, supra*, the court quoted with approval from 13 R.C.L. p. 377, Section 308:

"A municipality is required to maintain only the respective portions of the street, divided into sidewalks and roadway, in a reasonably safe condition for the purpose of which they are respectively devoted, that is, the sidewalks for pedestrians and the roadways for vehicles and horses. It is not bound to keep its sidewalk and footways fit for the use of vehicles, and drivers of vehicles who intentionally and unnecessarily use them for passage of their wagons, do so at their peril, and cannot hold the municipality liable for injuries sustained because of their unfitness for such use, at least where such use is a contributing cause of the injury. 13 R.C.L. p. 377, Section 308."

Use of Streets

The right of the public to use the streets in a proper manner is absolute and paramount. Streets are held in trust for the public for the ordinary purposes of travel and other customary uses. It follows that these public ways must be kept free from obstructions, nuisances, or unreasonable encroachments which destroy, in whole or in part, or materially impair, their use as public thoroughfares. A municipality may not in any way surrender or impair its control over streets.

In *State v. Louisville and Nashville R. Co.*, 48 So. 391 (Ala. 1908), the court held that when lands are dedicated as streets, a municipality has no power unless specifically authorized by the Legislature to divert them in any manner from the uses to which they were originally designated. Sections 11-49-100 through 11-49-106, Code of Alabama 1975.

Any encroachment on a street or any use of a street which is inconsistent with its use will constitute a nuisance which may be enjoined. *McKenzie v. Commalander*, 549 So.2d 476 (Ala. 1989). This is true whether the encroachment was caused by an individual or by the municipality. *Troy v. Watkins*, 78 So. 50 (Ala. 1918). An obstruction or encroachment may consist of anything which renders travel on the roadway more difficult. In *McIntosh v. Moody*, 153 So. 183, (Ala. 1934), a building was constructed by an individual in a public street in the city of Russellville, and the court declared it to be a nuisance. The court also found that the complainant, who suffered a special damage different from the general public, had the right to maintain the action and that the city of Russellville likewise had a cause of action to abate the nuisance.

For a discussion of the issues relating to the encumbrance of municipal streets for fairs or carnivals, see McQuillin, *Municipal Corporations*, Section 30.99, Third Edition.

It is settled that no one may use the streets of a municipality unless authorized by the governing body. Section 220 of the Constitution reads:

"No person, firm, association, or corporation shall be authorized or permitted to use the streets, avenues, alleys, or public places of any city, town, or village for the construction or operation of any public utility or private enterprise, without first obtaining the consent of the proper authorities of such city, town, or village."

In *Lybrand v. Pell City*, 71 So.2d 797 (Ala. 1954), the town sought to construct a swimming pool within the right of way of a street which had never been opened, although it was platted and dedicated. The Alabama Supreme Court reversed the trial court, which had denied a temporary injunction sought by the complaining property owner and held that the town's actions were unauthorized and void. The street had to be maintained as a street until vacated. For a complete discussion on vacating public streets, see the article in this publication titled "Vacation of Streets".

Many cities and towns have adopted ordinances making it illegal to block or obstruct streets, sidewalks and alleys. This is a recommended procedure since municipal officials then have available simple and easily understood language to point out to the offender. Such an ordinance may read: "It shall be unlawful for any person to encumber a street or sidewalk with ..." or "It shall be unlawful for any person to erect, extend or enlarge a fence so as to encroach upon the streets and sidewalks."

Abandonment of Streets

Often streets become abandoned through non-use. The Alabama Supreme Court in *Floyd v. Industrial Development Board of Dothan*, 442 So.2d 927 (1983), held that a public road may be abandoned by non-use for a period of 20 years or by a formal statutory action pursuant to Sections 23-4-1 through 23-4-6 of the Code. Additionally, the Alabama Court of Civil Appeals, in *Darnall v. Hughes*, 17 So.2d 1201 (2008), recognized that if one road replaces another, there can be an abandonment of a public road by nonuse for a period short of the time of prescription.

What right does a municipality have to the lands of such streets? In every instance, an investigation must be made as to the title and the manner in which the municipal interest was acquired. If the city or town merely holds an easement, it has no fee in the property which can be sold. In *Citronelle v. Gulf Oil Corp.*, 119 So.2d 180 (Ala. 1960), the facts of the case

showed that the town was grantee in a deed executed subsequent to the platting of the streets. The court held that the fee to the land across which a street is situated is not subject to alienation apart from the abutting lots after the dedication becomes complete. The court refused to permit the town to lease the mineral rights beneath the streets.

If the entire fee is owned by the city or town, it may sell or lease the lands under provisions of Sections 11-47-20 and 11-47-21, Code of Alabama 1975. These sections require an affirmative declaration that the property is “not needed for public or municipal purposes.” The utility of these sections is somewhat limited by the holding of *Moore v. Fairhope*, 171 So.2d 86 (Ala. 1965), if the property in question was dedicated to the municipality for use as a park.

A city or town should, because of the provisions of Section 94 of the Alabama Constitution, always receive adequate consideration for any lands sold or leased. This section prohibits the lending of the city’s credit or granting public property to individuals, associations or corporations.

Sidewalks

Questions often arise concerning municipal authority over sidewalks. Of particular interest in this connection is Section 11-49-2, Code of Alabama 1975, which states:

“Cities and towns may prohibit openings being made on the sidewalks for cellar entrances and may close the same, and may prescribe plans and specifications to be followed for such openings, if allowed. They may prohibit stationary or movable stands from being placed on the sidewalks and do any and all things necessary to secure free and ample passageway thereon, including the removal of stairways. They may prohibit the erection of awnings and verandas and signs hanging over the streets and sidewalks, and may prescribe plans and specifications therefor, if allowed. They shall require the sidewalks to be kept in repair, and, if not repaired by the owners of property abutting thereon, upon reasonable notice, to be determined by the council in the manner to be provided by ordinance, they may be repaired by the municipality at the owner’s expense, and the amount expended therefor shall be a lien upon the property, which, with interest, may be collected as taxes or assessments are collected.”

It is a good practice, in instances where a sidewalk opening is solely for the benefit of the property owner, to require indemnification by insurance or bond. A person injured because of an opening will almost invariably sue the city or town, along with the property owner, in any lawsuit that may be filed.

Section 11-48-10, Code of Alabama 1975, dealing with public improvements, permits a municipal council to establish the grade of sidewalks along with the grade of streets and alleys. Section 11-48-65 Code of Alabama 1975, specifically states that nothing in the article on public improvements shall be construed to affect the power and authority of a municipality to require property owners to repair sidewalks in front of their property. Moreover, since sidewalks wear out, a property owner should be encouraged, if the building is remodeled, to install new walks under supervision of city personnel.

In *Birmingham v. Holt*, 194 So. 538 (Ala. 1940), the city sought a mandatory injunction to require the removal of advertising signs placed on posts located on the sidewalks, taking the view that the signs obstructed and interfered with the use of the streets and hence constituted a nuisance. The court granted relief to the city holding that the city had no power to authorize the use of its streets for a private purpose. The court, in effect, held that the rules of law applicable to streets were also the rules of law applicable to sidewalks.

Summary

Unless otherwise qualified, a street is a public way or road, usually urban, and it embraces the surface from side to side and end to end. In common parlance, a sidewalk is the part of the street assigned to the use of pedestrians. *See, Smith v. Birmingham*, 168 So.2d 35 (Ala. App. 1964). The public also has an interest beneath and above the surface.

Generally, the same rules of law apply to public alleys as to streets. Municipalities have an affirmative obligation to maintain streets in a reasonably safe condition for use by the public. Anything or any use which interferes with public travel is apt to be illegal. Streets should be kept clear of obstructions and encroachments. Municipalities should exercise caution when alienating lands used for public streets.

Speed Limits

Generally, municipalities have the authority to set the speed limit on streets within its corporate limits. Ala. Code Section 11-49-4. However, Act 2023-130 provides that a municipality may not fix the speed limit on a county-maintained street, as defined in Section 11-49-80, located within the corporate limits of the municipality unless the municipality conducts an engineering and traffic investigation and receives written approval from the county engineer to fix the speed based on the results of that investigation.

Selected Attorney General's Opinions and Court Opinions

- Municipal and county street signs must conform to the Alabama Manual on Uniform Traffic Control Devices. AGO 1992-380.
- A municipality may not lease mineral rights under its streets. AGO to Hon. Richard H. Prescott, Jr., February 21, 1975.
- A municipality may close a road located in the city cemetery and allow the road to be used only for funerals and visiting the cemetery. AGO 1991-203.
- The Attorney General has also held that there are a number of methods by which a municipality may convey a right to construct a privately-owned passageway over a public roadway. AGO 1992-144.
- If a municipality has accepted a street for public use, the municipality assumes a duty to maintain the street in a reasonably safe condition for public travel. AGO 1995-265.
- Property may become dedicated to the municipality by purchase, express or implied dedication, condemnation, or adverse possession. This is a factual question. AGO 1995-275.
- If a county was in control of and maintained county roads and rights of way in the corporate limits of a municipality on July 7, 1995, it is to continue the maintenance and upkeep of these roads unless the procedures of Section 11-49-80(a) and 11-49-81 have been followed. In the absence of an agreement, a county cannot insist that a municipality's share of the gasoline tax proceeds be used for the upkeep of county roads in a municipality. AGO 2000-007. For more information on this see the article in this publication titled "Municipal Annexation of Property."
- The county remains responsible for streets and roads which are incorporated into a new municipality unless the municipality assumes responsibility pursuant to Sections 11-49-80 and 81, Code of Alabama 1975;AGO 1997-002.
- A city may not make improvements on streets that are within its police jurisdiction, but which are outside its city limits. AGO 2000-023.
- The City Council of Abbeville has the authority under its police power to enact an ordinance to close, during school hours, a portion of a public street located adjacent to property owned by the Henry County Board of Education. AGO 2000-030.
- A city may pave a roadway adjacent to a public street if the city acquires the adjacent roadway for a public purpose, for example, by dedication, transfer of deed, or acquisition by prescription. AGO 2004-143.
- A public road is established in one of the following three ways: (1) by a regular proceeding for that purpose, (2) by a dedication of the road by the owner of the land it crosses and a subsequent acceptance by the proper authorities, or (3) by the road's being used generally by the public for a period of 20 years. A public road may be abandoned in several ways including but not limited to the following: (1) the commencement of a formal, statutory action, (2) nonuse for a period of 20 years, or (3) if one road replaces another, there can be an abandonment of a public road by nonuse for a period short of the time of prescription. *Darnall v. Hughes*, 17 So.3d 1201 (Ala.Civ.App.2008).
- The City of Northport may legally close a public street at its city limits without actually vacating its public rights in a portion of the street. The City should give reasonable notice under the circumstances to afford proper notice to all interested persons prior to closing a street. AGO 2008-105.
- The municipality is an indispensable party to an action between private litigants seeking to determine whether a road is public or private. The fact that a municipal employee is called to testify as a witness at trial does not negate the requirement that the municipality be joined as a party to an action seeking to determine whether a road is public or private. *Allbritton v. Dawkins*, 19 So.3d 241 (Ala.Civ.App.2009).
- Based on the facts presented, the City of Sheffield is not authorized to expend public funds for the maintenance and upkeep of an 1840's bridge, connecting Colbert and Lauderdale Counties, which is located outside of its corporate limits. AGO 2010-017.
- A county is not an indispensable party to an easement action involving a private roadway over private land. *Steele v. O'Neal*, 87 So.3d 559 (Ala.Civ.App.2011).
- There is no authority for a municipality to independently place a toll booth on public streets. AGO 2013-030.
- Owner of property 400 feet away from vacated portion of county road lacked standing to appeal vacation of road, since owner failed to show that she had suffered a special injury as a result of the vacation; although owner alleged that she had used the vacated portion of the road to access a creek and that the vacated portion of the road was now blocked

with a chain and padlocks, owner did not show that there was no other convenient way to access the creek. *Crossfield v. Limestone County Comm'n.*, 164 So.3d 547 (Ala.2014).

- Because the county commission never accepted the streets located in the subdivision that is within the corporate limits of the town, the county is not obligated to maintain those streets. AGO 2014-042.
- The town should assume responsibility for the public streets in the areas annexed during the 24 months following incorporation at the same time it begins to assume responsibility for the streets in the newly incorporated town. AGO 2019-049.
- If the Elmore County Commission (“Commission”) was in control of and maintained county roads in the corporate limits of the Town of Coosada (“Town”) on July 7, 1995, it is to continue to control and maintain the roads unless the procedures of sections 11-49-80(b), (f), or 11-49-81 of the Code of Alabama have been followed or the Town takes control and maintains the roads. The Mayor does not have the authority to enter into an agreement with the County concerning the responsibility of roads without the approval of the Town Council (“Council”). In the absence of an agreement, a county cannot insist that a municipality’s share of gasoline tax proceeds or proceeds from the Rebuild Alabama Act (“RAA”) be used for the upkeep of county roads lying within a municipality. A county commission’s use of the “unit system” has no bearing on whether a municipality or county is responsible for roads lying within a municipality. AGO 2023-033.

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