



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

June 23, 2021

Ginger M. Miller, Esq.
Attorney for City of Senatobia
Post Office Box 50
Senatobia, Mississippi 38668

Re: Public Road

Dear Ms. Miller:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, the final plat of a subdivision located within the city limits of Senatobia was approved by the Senatobia Board of Aldermen (the “Board”) and filed with the Tate County Chancery Clerk in 2007. The plat was filed without the signature of the City Engineer. In the Certification section of the plat, the owners stated that they “dedicate the road rights of way and easements as shown hereon to public use forever.” You state that there was no other formal dedication of the roads, and the roads are not listed on the tax rolls as public streets. In a telephone conversation, you stated that there was no “formal acceptance” of the “dedication” documented on the municipal minutes.

Questions Presented

1. Is the notation on the plat dedicating “road rights of way and easements” to public use sufficient to classify the streets in the subdivision as public?
2. Can a road be dedicated to the public but still maintained by a homeowners’ association or developer?
3. Is the plat null and void due to the city engineer not signing off on it?

Brief Response

1. Since the plat was approved by the Board and filed with the Chancery Clerk, pursuant to Mississippi Code Annotated Section 21-19-63, the roads of the subdivision are public.

2. If the roads were made public, the city has a duty to maintain such roads for the public good, and a municipality has no authority to surrender any jurisdiction or authority conflicting with its duty to keep streets in reasonably safe condition. However, a municipality may accept, as a donation or gratuity, work and/or materials on a public street by a private individual to be performed under the supervision and control of the governing authorities.
3. No. Section 19-27-23, governing the required contents of maps and plats, does not require the engineer's signature.

Applicable Law and Discussion

"Public roads are established by dedication, prescription or by statutory procedures established by law." MS AG Op., *Thomas* at *2 (Feb. 28, 2014). Dedication is "the setting aside of land for public use." MS AG Op., *Purdie* at *1 (quoting *McBroom v. Jackson Cnty.*, 154 So. 3d 827, 832 (Miss. 2014)). The two types of dedication are common law and statutory, the latter governed by specific statutes. *Purdie* at *1. The Mississippi Supreme Court has held that a common law dedication creates a mere easement, but in a statutory dedication, which operates by way of a grant, the fee is in the public. *Nettleton Church of Christ v. Conwill*, 707 So. 2d 1075, 1076 (Miss. 1997). Section 21-19-63 controls statutory dedication and provides, in part, that:

[t]he governing authorities of municipalities may provide that any person desiring to subdivide a tract of land within the corporate limits shall submit a map and plat of such subdivision, and a correct abstract of title of the land platted, to said governing authorities, to be approved by them before the same shall be filed for record in the land records of the county. Where the municipality has adopted an ordinance so providing, no such map or plat of any such subdivision shall be recorded by the chancery clerk unless same has been approved by said governing authorities. ***In all cases where a map or plat of the subdivision is submitted to the governing authorities of a municipality, and is by them approved, all streets, roads, alleys and other public ways set forth and shown on said map or plat shall be thereby dedicated to the public use, and shall not be used otherwise unless and until said map or plat is vacated in the manner provided by law, notwithstanding that said streets, roads, alleys or other public ways have not been actually opened for the use of the public.***

Miss. Code Ann. § 21-19-63 (emphasis added). From this statutory language, it is clear that upon the board's approval of the plat, "all streets, roads, alleys, and other public ways set forth and shown" on the plat or map shall be dedicated to public use. *Id.*

You state that the final plat of the subdivision was approved by the Board and filed with the chancery clerk. Thus, the streets, roads, alleys, and other public ways have been dedicated to the public use and will remain public until such time as the plat or map is vacated or abandoned in a manner provided by law. Because the Supreme Court of Mississippi has held that statutory dedication operates as a grant and vests fee simple title in the municipality, *Nettleton Church of Christ*, 707 So. 2d at 1076, there is nothing further required to make the subdivision streets public.

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Your second question asks whether a road dedicated to the public can be maintained by a homeowners' association or developer. "When approval of a map or plat is given pursuant to Section 21-19-63, the platted streets, roads, alleys, and other public ways set forth and shown are thereby dedicated to public use. . . [and] [t]hereafter, the public good demands that a municipality maintain its streets in a reasonably safe condition, free from obstructions and other impediments to their safe usage." MS AG Op., *Baskin* at *1 (Oct. 17, 1997). The City of Senatobia's duty to maintain the streets flows from the statutory dedication of the subdivision streets. "A municipality has no authority to surrender any jurisdiction or authority conflicting with its duty to keep streets in reasonably safe condition." MS AG Op., *Carnathan* at *1 (citing *Town of Senatobia v. Dean*, 127 So. 773 (Miss. 1930)). However, a "municipality may accept, as a donation or gratuity, work and/or materials on a public street by a private individual to be performed under the supervision and control of the governing authorities. The governing authorities may, within their discretion, pave such street." *Id.*; MS AG Op., *Hammack* at *1 (Apr. 3, 1998) (citing *Carnathan*). Thus, the City of Senatobia may accept, as a donation or gratuity, work and/or materials on a public street by a private individual to be performed under the City's supervision and control.

Turning to your third question, Section 19-27-23 states that the map or plat filed with the chancery clerk shall be signed by the proprietor and surveyor but imposes no mandate that the map or plat be signed by the engineer. Accordingly, the filing of the plat with the chancery clerk without the engineer's signature does not render the document invalid.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ *Misty Monroe*

Misty Monroe
Special Assistant Attorney General