



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 8, 2024

The Honorable Russ DuBose
Mayor, Town of Georgetown
Post Office Box 138
Georgetown, Mississippi 39078

Re: Obstruction to Public Right-of-Way

Dear Mayor DuBose:

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

Background

A property owner in the city limits of Georgetown (“Town”) has erected a privacy fence that obstructs a public right-of-way through an alley. The Town has notified the property owner of the obstruction and submitted to him an official plat map of Block 26 in the Town, filed of record in the Copiah County Chancery Clerk’s Office on August 1, 1910, and recorded in Plat Book A at pages 39-40, delineating his property line and the Town’s public right-of-way in the alley.

Questions Presented

1. What is the definition of a public right-of-way?
2. Can a property owner permanently obstruct a public right-of-way without the approval of the governing authorities?
3. If not, what action can the Town take to remedy the obstruction?

Brief Response

1. A public right-of-way is “[t]he right of passage held by the public in general to travel on roads, freeways, and other thoroughfares.” *Right-of-Way*, BLACK’S LAW DICTIONARY (12th ed. 2024).
2. A property owner cannot permanently obstruct a public right-of-way.

3. What action the Town can take to remedy the obstruction is ultimately within the discretion of the governing authorities of the Town based on the advice and counsel of their attorney.

Applicable Law and Discussion

A public right-of-way is “[t]he right of passage held by the public in general to travel on roads, freeways, and other thoroughfares.” *Right-of-Way*, BLACK’S LAW DICTIONARY (12th ed. 2024). Further, “[u]nder Mississippi law, the terms easement and right-of-way are used interchangeably to refer to an interest in land[,]” and “the term right-of-way typically describes a strip of land used for public transportation by rail or road or for public utilities.”) 7 MS PRAC. ENCYCLOPEDIA MS LAW § 60:2 (3d ed.).

For your general guidance, the platting of a public road or highway may presumptively create an easement for public use. *Briel v. City of Natchez*, 48 Miss. 423, 436 (1873).

Mississippi Code Annotated Section 21-19-63 provides in pertinent part:

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*

(emphasis added).

“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.” MS AG Op., *Baskin* at *1 (Oct.17, 1997) (citing MS AG Op., *Waits* (July 9, 1979)). Additionally, in order for a public right-of-way to be acquired by dedication, there must be an acceptance, but “such acceptance may occur ‘either by the formal act of the local municipal authority, or it may be inferred or implied by sufficient circumstances.’” *Luter v. Crawford*, 92 So. 2d 348, 352 (Miss. 1957) (citing *Briel*, 48 Miss. at 436).

In the specific context of your request, the Town’s public right-of-way is presumed to be the right to enter and use the alley connecting two public streets as designated by the official plat map of Block 26, filed August 1, 1910, with the Copiah County Chancery Clerk’s Office. However, the question of whether the right-of-way was dedicated to and accepted by the Town turns on a factual determination which is to be made by the governing authorities of the municipality, subject to review by a court of competent jurisdiction. MS AG Op., *Barton* at *1 n.2 (May 17, 2021) (identifying questions of fact as one of various kinds of questions that cannot be addressed by official opinion).

A private property owner cannot permanently obstruct a municipality’s right-of-way. *Gaw v. City of Holly Springs*, 87 So. 2d 909, 914 (Miss. 1956) (affirming chancellor’s order requiring property owners to remove a fence and enjoining them from further obstructing an alley in which the municipality held an easement for public travel); *Brown v. City of Gulfport*, 57 So. 2d 290, 294

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(Miss. 1994) (affirming chancellor's order requiring property owner to remove his building obstructing public sidewalk).

What action the Town can take to remedy the obstruction is ultimately within the discretion of the governing authorities of the Town based on the advice and counsel of their attorney.

However, regarding a county right-of-way, we have previously opined that a county board of supervisors "is authorized to take whatever action necessary to maintain the public right-of-way, and the landowner is prohibited from taking any action which obstructs or adversely affects the right[-]of[-]way." MS AG Op., *Snowden* at *2 (May 23, 2014). In that same opinion, we stated the following:

[I]f the board of supervisors makes a factual finding that a concrete wall is an obstruction to a public right-of-way, adversely affects the right-of-way, or constitutes a safety hazard on the right[-]of[-]way, the Board of Supervisors may request the landowner remove the portion of the wall that is adversely affecting the right-of-way at his own expense.

Id. at *1. Ultimately, whether a particular property owner's fence has indeed obstructed the Town's right-of-way is a factual determination that must be made by the Town and upon which our office cannot opine. See MS AG Op., *Barton* at *1 n. 2.

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/ Caleb A. Pracht

Caleb A. Pracht
Special Assistant Attorney General