



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

April 16, 2026

Stephen Brandon, Esq.
Attorney, Coahoma County Board of Supervisors
Post Office Box 579
Clarksdale, Mississippi 38614

Re: Authority to Designate and Utilize Right-of-Way Along Roads Maintained
by Coahoma County

Dear Mr. Brandon:

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

Background

According to your request, Coahoma County (the “County”) seeks general guidance for a potential uniform 40-foot right-of-way easement designation along all county roads to facilitate safe access for county maintenance and utilities.

Questions Presented

1. Does the County have the authority under Mississippi law to designate a 40-foot right-of-way easement along all county roads that it maintains, for the purposes of road maintenance and utilities access? For example, may the County assert that it maintains a 40-foot right-of-way easement (typically 20 feet on each side of the road centerline) for activities such as grading, drainage improvements, repairs, and the installation or maintenance of utilities by authorized public or private entities?
2. If the County has acquired a prescriptive right-of-way easement for maintenance purposes that extends beyond any designated blanket right-of-way easement (e.g., through continuous public use and maintenance for the statutory period), may the County permit utilities to be installed or maintained within that prescriptive easement?

Brief Response

1. There is no statutory authority for counties to unilaterally designate a 40-foot right-of-way easement along county roads.
2. The County may permit utilities to be installed if the board of supervisors determines that such work falls within the scope of a legitimate prescriptive right-of-way easement held by the County.

Applicable Law and Discussion

Mississippi Code Annotated Section 65-7-1(1) generally provides “[t]he board of supervisors of each county” with “full jurisdiction over all matters relating to the public roads of the county.” However, there is no statutory authority allowing counties to unilaterally designate a 40-foot right-of-way easement *along* all county roads for any purpose, including but not limited to the purposes of road maintenance and utilities access.¹ Any designated right-of-way easement must be acquired in a manner provided for by law. *See* Miss. Code Ann. § 65-18-13 (“All rights-of-way and adjustments for utilities necessary for Local System Road Program projects must be acquired or performed by the boards of supervisors in the manner provided by law for the acquisition of rights-of-way, including gift, purchase, deed, dedication and eminent domain.”).²

You next ask if the County may permit utilities to be installed or maintained within a prescriptive right-of-way easement when the prescriptive easement was acquired for maintenance purposes. In short, yes, the County may permit utilities to be installed if the board of supervisors determines that such work falls within the scope of a legitimate prescriptive easement held by the County.

“A prescriptive easement requires the same elements to be proven as does a successful claim for adverse possession.” *Webb v. Mearns*, 944 So. 2d 917, 920 (Miss. Ct. App. 2006). That is, “the evidence must show that possession is: (1) under claim of ownership; (2) actual or hostile; (3) open, notorious, and visible; (4) continuous and uninterrupted for a period of ten years; (5) exclusive; and (6) peaceful.” *Id.* (quoting *Keener Props., LLC v. Wilson*, 912 So. 2d 954, 956 (Miss. 2005)). Ultimately, “[t]he board of [supervisors] should determine whether prescription has occurred and spread such finding on its minutes.” MS AG Op., *Stockton* at *1 (July 27, 2007). Assuming the County holds a legitimate prescriptive easement, the scope of such easement “is defined by the adverse use exercised during the period of prescription.”³ *Fratesi v. City of*

¹ A right-of-way is generally understood to be a type of easement. *See Logan v. McGee*, 320 So. 2d 792, 792 (Miss. 1975) (referencing “prescriptive right-of-way easement” and later referencing the same simply as an “easement”).

² Pursuant to Section 65-18-3:

[T]he term “local system road” means a road that is included on the county road system as designated under Section 65-7-4 that (a) is functionally classified as a local rural road in accordance with policies on geometric design of highways and streets adopted and published by the American Association of State Highway and Transportation Officials; (b) provides access to the state aid system, the federal aid system or the designated state highway system; and (c) has an average daily traffic count of four hundred (400) vehicles or less.

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Indianola, 972 So. 2d 38, 43 (Miss. Ct. App. 2008). Therefore, whether the County may permit utilities to be installed or maintained within a prescriptive right-of-way easement for maintenance is dependent upon the determined scope of such easement, which is a determination of fact to be made by the board of supervisors. *See* Miss. Code Ann. § 7-5-25 (authorizing the Attorney General to opine upon prospective matters of state law only).

Finally, your request does not make clear whether the subject utility installation would be done by the County or by another entity. Please note that authority is typically necessary for another entity to use a county's right-of-way easement. *See, e.g.*, Miss. Code Ann. § 77-5-155 ("Any [power] district created pursuant to this article shall have the power: . . . (i) To use any right of way, easement or other similar property right necessary or convenient in connection with the acquisition, improvement, operation or maintenance of a utility, held by the state or any political subdivision thereof, provided that the governing body of such political subdivision shall consent to such use.").

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/ Maggie Kate Bobo*

Maggie Kate Bobo
Special Assistant Attorney General

³However, "[s]o long as the servient estate is not unreasonably interfered with or damaged, the easement holder is authorized to perform maintenance reasonably necessary to permit the continued use and enjoyment of the easement for its intended purpose." *Fratesi*, 972 So. 2d at 43.