

OFFICE OF THE ATTORNEY GENERAL



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File # 163

CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

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ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205), 834-5150

LEE L. MALE
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
ADMINISTRATIVE ASSISTANT

Senator Mike Weeks
P. O. Box 322
Troy, Alabama 36081

Senator Robert (Bob) Hall
593 W. Knob Noster Road
Pinson, Alabama 35126

Senator Don Harrison
516 South Perry Street
Montgomery, Alabama 36104

Hon. William B. Dunn
Howard & Dunn, Attorneys
P. O. Box 161
Wetumpka, Alabama

Highway Department - Counties -
Roads -

Highway Department not required
to maintain county roads

Gentlemen:

This office is in receipt of your requests for opinion relating to construction and maintenance of certain highways in several counties in the State. Since all of your questions relate to the same subject matter, it is thought that one opinion will be sufficient for the needs of all.

The question submitted for consideration concerns the legality of the Highway Department to return roads on which they have previously assumed responsibility for construction and

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maintenance back to the county. For the purposes of this opinion it is assumed that maintenance of the roads was originally assumed by the State Highway Department pursuant to the general law of this state. If maintenance was assumed pursuant to a specific local law then the terms of that local law would govern the Highway Department's responsibility.

Research by this office has not revealed any recorded legal precedent upon which to rely in formulating an opinion in the instant matter other than an opinion to the State Highway Commission, dated February 21, 1936, Quarterly Reports of the Attorney General, Volume 2, page 192, which deals with a kindred situation except that the roads there under consideration were, at that time, considered to be in the State Highway System and are now in the County System as classified in the Highway Department. The conclusions stated here are derived from a reasoning based upon the apparent intent of legislation and a reasonable and logical interpretation thereof.

Historically the State Highway Commission was responsible for and had jurisdiction, more or less, over all public roads. In 1927 the Alabama Highway Code was enacted and the obligation of the Highway Department, for the most part, was limited to "State trunk roads" and city streets. The counties were apparently given the obligation toward the county roads. Code of Alabama 1975, §11-3-10 has been brought forward in substance from 1852 with the control of county roads vested in the county governing bodies 'except as otherwise provided by law' which exception is found in Code of Alabama 1975, §23-1-40. In furtherance of this concept and to aid the counties in their road programs the 'Farm to Market' program was inaugurated in 1943 and those roads were designated 'not a part of the State Highway System,' but were classified and recognized as county roads. This Act (#329) was repealed in 1969 and consequently not brought forward in the 1975 Code. Hence, it must be assumed that the status of these 'Farm to Market' roads and county roads constructed during the intervening years between 1969 and 1975 are classified as county

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roads and the State Highway Department has no duties toward construction and maintenance other than in an advisory capacity at the request of the county.

Legislation requiring the Highway Department to take over the maintenance and construction of a county's roads is indicative of the fact that such roads are not part of the State system and these counties are identified as 'captive counties.' It is reasonable to assume that if legislation is required to place the responsibility upon the State Highway Department in such instances, then it would require legislation to restore same to the county governing body. Likewise, if, by resolution, the Highway Department agrees to and may take over the maintenance and construction of the county roads, then by the same action it may return this responsibility and obligation to the control of the county. The general authority of the Highway Department with relation to the public roads in the State is found in said §23-1-40, and it appears to be discretionary with the Highway Department to take over county roads pursuant to the provisions of Code of Alabama 1975, §23-1-48.

It is evident that the roads here under consideration were and are county roads and the responsibility for their maintenance and upkeep rests upon the county governing body. Code of Alabama 1975, §23-1-80. The State Highway Department accepted that responsibility by resolution entered upon the minutes of the said Department. It is the opinion of this office that the Highway Department, upon the same procedure, may return this responsibility to the counties involved. Consideration must be given to the realization that should the State Highway Department be forced to continue the maintenance and construction of said roads, the Director could request the roads be abandoned and this would accomplish the same result.

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If a contrary view be taken, then the Highway Department could be burdened for the construction and maintenance of all roads, bridges, streets and highways in the State and a new administration would be forced into a funding situation which would create havoc in financing such a program.

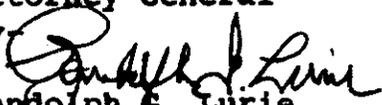
In the event the two city streets in the City of Guntersville are a part of the State road system and are 'connecting links' as defined in said §23-1-40, or under agreement as authorized in the Code of Alabama 1975, §23-1-47, or pursuant to Article 4 of said 23-1 of said Code, then the obligation of the State Highway Department is fixed and should remain so.

It is respectfully suggested that this matter may best be determined by legislation and this office offers its facilities for that purpose.

Sincerely,

CHARLES A. GRADDICK
Attorney General

by


Randolph S. Lurie
Assistant Attorney General

RGL:cd