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Honorable Brent Morrison
City Clerk
City of Piedmont
P. O. Drawer 112
Piedmont, AL 36272

Municipalities - Private Work -
Utilities

Duty of municipal utility with
regard to responsibility for
trees discussed.

Dear Mr. Morrison:

The opinion request of the City of Piedmont has been received in the Office of the Attorney General. Your request presents the following information:

The City of Piedmont owns and operates its own Electrical Utility Distribution System. Subsequently it is our responsibility to maintain the system in a responsible manner. In order to better serve our customers on our system we respectfully ask the following questions be addressed:

The first question is:

If a tree is located such that a portion of the trunk is on private property and the other portion is on city property is the city responsible for the cutting of that tree if the need should arise? Also, if the tree is not cut could the city be held liable for any damage to private property which might occur should the tree in question fall?

If the tree is located on both public and private property, it appears that if a municipality is acting under the police power, rather than the power of eminent domain, it would be fully justified in cutting the tree. Although the Court in the following illustration was discussing removal of trees from streets it might be helpful to you in deciding under what circumstances a tree could and should be removed. The Alabama Municipal Journal, Volume 42, Number 4, "Trees" states:

The Court in City of Birmingham v. Graves, 200 Ala. 463, 76 So. 395, provided a simple illustration for determining whether a municipality's actions were taken under its police power or under the power of eminent domain, namely:

'The abutting property owner has trees on the margin of the sidewalk, which in no manner obstruct the same or interfere with the use thereof, but which add both ornament and comfort to his premises, and, therefore, are of value; if the municipality sees fit to widen the street, and this involves a destruction of these trees, then, in our opinion, section 235 of the Constitution comes to his rescue, and the McEachin Case would be there found applicable. If, however, on the other hand, the property owner should plant a tree in the center of the sidewalk and thus obstruct the same, he would create a nuisance which the city could abate without any compensation whatever; and, indeed, it would be the duty of the municipality to remove the tree. In the latter instance, of course, the provisions of the Constitution would have no application whatever, and this, in our opinion, is the instant case as set up in the answer which was denied.'

Furthermore, the city could be held liable for damage to private property should the tree fall. The word could should be emphasized and would require the proof of negligence on the part of the municipality.

It is difficult to respond to your questions in detail because in each instance involving the cutting of a particular

tree the facts will be different. The information presented in response to your questions should, therefore, be considered as general guidance rather than a definitive response to a question involving a particular fact situation.

Your second inquiry is stated as follows:

If a tree is located on private property but, because of its location, it interferes with the service line which is between the building and the utility pole can the city legally enter onto private property to trim or cut the tree in question? Also, if damage should result from a fault caused by such a tree to the personal property of the customer is the city liable for those damages?

The answer to your first question is yes, if the service line is owned by the municipality and the municipality holds an easement. Otherwise, all relevant facts should be considered before a decision is made. It should be noted that the authority of a municipality to abate a nuisance as set forth in Code of Alabama 1975, §§ 11-47-117 and 118 and 6-5-121 should be reviewed. The question of liability is one which must ultimately be determined in a court of competent jurisdiction.

Your third question is:

If a tree is located on private property but its location is such that should it fall the Electrical Distribution System or city property would be damaged can the city legally enter onto private property in order to cut or trim the tree in question in order to protect the system?

The answer to your question is yes.

Your fourth question reads as follows:

The City of Piedmont receives numerous requests to install security lighting on private property. Under what circumstances may we legally accommodate those with such a request?

There are no circumstances under which this activity would be permitted.

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I do hope that this response sufficiently answers your inquiry. If, however, we may be of further service, please do not hesitate to contact us.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General

By:



CAROL JEAN SMITH
Assistant Attorney General

CAG/CJS/pd