

# OFFICE OF THE ATTORNEY GENERAL



94-00091

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FEB 24 1994

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Honorable Alan S. Robbins  
Mayor, City of Florala  
P. O. Box 354  
Florala, AL 36442

Municipalities - Streets -  
Vacation

The City of Florala, at the request of a property owner, may in its discretion, vacate a street, avenue and alley surrounded by property owner's property provided the requirements of Code of Alabama 1975, § 35-2-54, are satisfied. Procedure set out in Code of Alabama 1975, § 35-2-54 should be followed if city decides on such vacation.

Dear Mayor Robbins:

This opinion is issued in response to your request for an opinion from the Attorney General.

## QUESTION

May the City of Florala, at the request of a property owner, vacate a street, avenue and alleys which are surrounded by his property, and what is the procedure for doing so?

FACTS, LAW AND ANALYSIS

It is stated in your request that the request concerns an area which is swamp land. The owner of the property surrounding this area wishes to have a street, avenue and alleys surrounded by his property closed so that he can construct a business building.

Code of Alabama 1975, § 35-2-54 concerns the vacation of streets or alleys by abutting landowners. It states:

"Any street or alley shown by any map, plat or survey, whether such map or plat is executed and recorded as provided by law or not, may be vacated, in whole or in part, by the owner or owners of the lands abutting the street or alley (or that portion of the street or alley desired to be vacated), or their executors, administrators or guardian, joining in a written instrument declaring the same to be vacated, such written instrument to be executed, acknowledged and recorded in like manner as conveyances of land, which declaration being duly recorded shall operate to destroy the force and effect of the dedication by the map, plat or survey and to divest all public rights, including any rights which may have been acquired by prescription, in that part of the street or alley so vacated. If any such street or alley is within the limits of any municipality, the assent of the mayor and aldermen or other governing body of the municipality must be procured, evidenced by a resolution adopted by such governing body, a copy of which, certified by the clerk or ministerial officer in charge of the records of the municipality must be attached to, filed and recorded with the written declaration of vacation. Convenient means of ingress and egress to and from their property shall be afforded to all other property owners owning property in the tract of land embraced in the map, plat or survey, either by the remaining streets and alleys dedicated by such map, plat or survey or by any other street or alley being dedicated."

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According to this provision, a street or alley shown by map, plat or survey may be vacated, in whole or in part, by abutting property owners. Section 32-2-54 also lists the technical requirements of the written instrument of vacation, requires the assent of the municipal governing body, and provides that convenient means of ingress and egress to and from their property must be afforded to all other property owners owning property in the tract of land embraced in the map, plat or survey.

It is imperative that interested property owners in the area not be denied private and public access to any public property in the area, i.e., a public body of water. Jackson v. Moody, 431 So.2d 509 (Ala. 1983); opinion of the Attorney General to Honorable Thomas B. Norton, Mayor, Gulf Shores, dated May 30, 1983, A.G. No. 83-00334.

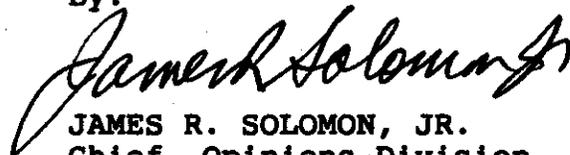
#### CONCLUSION

The City of Florala, at the request of a property owner, may in its discretion, vacate a street, avenue and alley surrounded by property owner's property provided the requirements of Code of Alabama 1975, § 35-2-54, are satisfied. Procedure set out in Code of Alabama 1975, § 35-2-54 should be followed if city decides on such vacation.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
Attorney General  
By:

  
JAMES R. SOLOMON, JR.  
Chief, Opinions Division

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R12.93/OP