

OFFICE OF THE ATTORNEY GENERAL ⁹⁵⁻⁰⁰¹⁷⁴



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ATTORNEY GENERAL
STATE OF ALABAMA

APR - 3 1995

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Honorable S. Keith Powell
Administrator
Pickens County Commission
P. O. Box 460
Carrollton, AL 35447

Counties - Subdivisions -
Roads, Highways and Bridges -
Private Work

The Pickens County Commission cannot pave a subdivision road using county equipment and county employees prior to the dedication of such road for public use and the acceptance of such road as a public road by the county, even if the county may be reimbursed for materials, labor and equipment used prior to the dedication and acceptance.

Dear Mr. Powell:

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

QUESTION

Can the Pickens County Commission pave a subdivision road using county equipment and county employees?

FACTS, LAW AND ANALYSIS

The following facts are set out in your request:

We have been requested to pave a road into a subdivision being developed using county equipment and work force. The county would be reimbursed for the paving material by the developer. After the work is completed, the right-of-way would be deeded to the county and Pickens County would assume maintenance responsibility.

We are requesting that you give us an opinion if the county may do the work, if yes, the sequence of work, i.e., should work be done by Pickens County prior to assuming ownership of right-of-way? Also, should the developer be charged for the county employees' salaries and fringe benefits, as well as charged for the rental rates of all equipment used?

Code of Alabama 1975, § 23-1-80 and § 11-3-10 give the county commission of each county authority over the public roads within the county and the power to determine which roads should be accepted as "public roads." Opinion of the Attorney General to Honorable Sid Holcomb, President, DeKalb County Commission, dated February 11, 1988, A.G. No. 88-00173.

The regulation of subdivisions is provided for at Code of Alabama 1975, § 11-24-1, et seq. Section 11-24-1 states that the county commission is authorized to regulate, among other things, the planning and constructing of all public streets and roads within a subdivision. However, such streets and roads are not public streets or roads until they are dedicated for public use and accepted as a public road by the county. Quarterly Report of the Attorney General, Vol. 188, p. 13.

This office has concluded that a county may do work on a private road only when: (1) there is local legislation permitting the county to do such work; (2) the legislation provides that the county will be fully reimbursed for the labor, materials and equipment used in the work; and (3)

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there is a provision of certainty in the legislation that the county will be paid. Opinions of the Attorney General to Honorable Earl Goodwin, Member, State Senate, District No. 24, dated April 30, 1990, A.G. No. 90-00257 and to Honorable Ronald L. Myers, District Attorney, Thirty-Seventh Judicial Circuit, dated December 16, 1988, A.G. No. 89-00089. My research does not indicate that there is such legislation for Pickens County.

CONCLUSION

Therefore, it is the conclusion of this office that the Pickens County Commission cannot pave a subdivision road using county equipment and county employees prior to the dedication of such road for public use and the acceptance of such road as a public road by the county, even if the county may be reimbursed for materials, labor and equipment used prior to the dedication and acceptance.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact James R. Solomon, Jr., of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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