



# Memorandum

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From D. Hogue

## County Roads

In Arkansas there are three distinct types of roads: County Roads, Public Roads, and Private Roads. This Memorandum will explain the differences in these types and how these roads are created, designated, maintained, and finally abandoned.

### Types of Roads

A **County Road**, is any road within Faulkner County that has been accepted into the county maintenance system either by ordinance or court order.

A **Public Road**, is any road within Faulkner County that has not been accepted by the County Judge into the county maintenance system, but has a prescriptive easement or has been deeded or dedicated to Faulkner County for public use.

A **Private Road** is any road within Faulkner County for which no prescriptive easement exists and the road has not been deeded or dedicated to Faulkner County for public use.

### Establishment of Roads

A county road may be established by any one of three methods. Establishment of a county road may be initiated by (a) the County Judge, (b) a group of residents, or (c) an individual.

#### Judge

The County Judge may establish a county road by his signature. Under Amendment 55, § 3 of the Arkansas Constitution, a county judge is granted authority to “operate the system of county roads.” This has been interpreted and clarified by the Arkansas Supreme Court and Legislature, respectively, to give the judge authority to open new roads as well as make changes in old roads, as deemed necessary and proper. (A.C.A. §14-298-120; *Reding v. Wagner*, 350 Ark. 322 (2002)) This authority is broad but by no means unlimited, as any “taking” of private property must be compensated according to federal and state constitutional standards. Further, a judge would exercise this authority very cautiously given the likelihood of opposing positions of residents on a given road. The judge is more specifically authorized to designate as a county road any road that is the most direct route to the county courthouse for ten or more families (A.C.A. §27-66-204), any road used as a mail route (A.C.A. §27-66-205), and those roads used as school bus routes (A.C.A. §27-66-206).

## Group of Residents

Any ten or more interested landowners may petition the county court to open a *county* road. (A.C.A. §14-298-102-105, 108, 112-116) This starts a process set out in the statutes mentioned above, outlined as follows:

- Previous to any petition being filed, notice must be given in the county newspaper. (A.C.A. §14-298-102)
- The petition must give the starting point, intermediate points, and termination point of the road, along with any other description available. (A.C.A. §14-298-104)
- The petition must be accompanied by a bond signed by at least one of the petitioners, to reimburse the county for any claims that may be sustained for lands taken. (A.C.A. §14-298-103)
- The county court will appoint three disinterested citizens of the county to act as viewers of the road. These viewers will assess and determine compensation and damages to be paid to the current landowners, view and survey the road, and determine if the road fulfills a public need. (A.C.A. §14-298-105)
- The petitioners shall give 30 days' notice of the time and place of the meeting to discuss the subject road to all landowners of said road and to the viewers. The petition shall also be posted on the door of the county clerk's office for two weeks before the meeting of the viewers. (A.C.A. §14-298-108)
- The viewers will submit a written report stating their findings and their opinion in favor or against the establishment of the county road. (A.C.A. §14-298-112) This report will be given to all parties, the petitioners and landowners, and read publically by the county court. (A.C.A. §14-298-113)
- If no legal objection to the report is made and the court is satisfied that the road is of sufficient importance to the public, then the road shall be considered a public road. (A.C.A. §14-298-113)

After the county court's decision and all review and appeal processes by the affected landowners have been exhausted (A.C.A. §14-298-115, 116), an Order declaring the road to be opened shall be filed with the county clerk. (A.C.A. §14-298-114)

The establishment of a *public* road also may be initiated by a group of residents. Any five or more interested landowners may petition the county court to open a public road. (A.C.A. §14-298-120, 121) This starts a process set out in the statutes mentioned above, outlined as follows:

- The Petition must give the starting point, intermediate points, and termination point of the road, along with any other description available.

- The Petition must be accompanied by a bond signed by at least one of the petitioners, to reimburse the county for any claims that may be sustained for lands taken.
- County court sets a date for hearing on the petition upon filing.
- The county clerk shall publish the notice, petition and hearing date in the county newspaper once, for two weeks, at least 10 days before the hearing.
- At the hearing, the court will hear from opposing parties and either grant or deny the petition. The court will enter an Order to document the decision.
- Within 10 days of entry of the Order, the clerk will cause the Order to be served on each landowner of record.
- If the owner of the land refuses to grant right-of-way, he may present a verified claim for damages to county court within 12 months from the date of service of the order opening the road, and may appeal an adverse decision regarding such claim.

#### Individual

An individual may initiate the establishment of a county road by either one of two methods: the dedication of a private road (A.C.A. §2-66-207) or the transfer of a deed for any strip of ground from the individual to the county (A.C.A. §27-66-208).

A private road may be dedicated to the county provided that a bill of assurance making the dedication is properly recorded (A.C.A. §2-66-207), the individual has applied for and been granted by the County Judge all necessary permits and forms, and the private road meets all construction requirements set in the Faulkner County Ordinances. Necessary permits and forms include any permits necessary for the construction, reconstruction, alteration, removal, or replacement or any portion of the road, curb, gutter, drainage structure, or driveway abutting a dedicated street within the county (Faulkner County, Arkansas Ord. 07-15) as well as a subdivision plat which is required for any individual subdividing land. The subdivision plat shall indicate the right-of-way to be dedicated to the public as well as the location of water lines and fire hydrants. The plat for the said subdivision shall be approved by the County Judge before the constructions of roads are implemented (Faulkner County, Arkansas Ord. 07-15). The construction requirements for private roads (Faulkner County, Arkansas Ord. 77-19 and 77-13) are set out in the ordinances mentioned above, outlined as follows:

- The road bed must be a minimum of 24 feet wide. (Faulkner County, Arkansas Ord. 77-19)
- A 50 foot right-of-way, calculated from the center of the road bed, will be required in all instances. (Faulkner County, Arkansas Ord. 77-19)
- A minimum of five inches of SP-2 gravel compacted upon the road bed is required. (Faulkner County, Arkansas Ord. 77-19)

- A minimum of six inches of (Class 7) gravel compacted upon the road bed is required. (Faulkner County, Arkansas Ord. 07-13)
- Any drainage across the road right-of-way must be either concrete or galvanized tile of such dimensions as 15 inches in diameter and 24 feet long. (Faulkner County, Arkansas Ord. 77-19 and *Faulkner County Road Improvement Guide*)
- Sloped drainage ditches are required for each side of the road bed and are to be contoured to facilitate the flow of surface water resulting from rains. (Faulkner County, Arkansas Ord. 77-19)
- A dead-end road must have a minimum 50 foot turning radius at the termination point of the road. (Faulkner County, Arkansas Ord. 07-13)

All of these requirements must be met and verified by the County Road Department. After one year from this initial verification, a second verification is required (Faulkner County, Arkansas Ord. 84-13). Provided that a dedication deed and/or a subdivision plat, which precisely and legally describes the road under consideration, is on file with the Circuit Clerk, the County Judge, using his or her discretion, may accept the private road as a county road through a court Order.

An individual may deed a strip of ground to the county. It is up to the County Judge's discretion, however, whether or not to accept that strip of ground into the county road system.

The establishment of a public road may be initiated by an individual who is legally landlocked, meaning that they have no legal access to their house, plantation, or land. This individual may request an access easement through another person's private land. (A.C.A. §27-66-401-403) This starts a process set out in the statutes mentioned above, outlined as follows:

- The landowner must give written notice to the respondent 20 days before application to the court. The written notice shall include the amount of payment the landowner offers for the road. (A.C.A. §27-66-401)
- The petition by the landowner must be filed with the clerk of the county court and shall demonstrate: that written notice was provided to the respondent, the respondent refused to convey to the landowner the requested access easement, and that the landowner lacks a legal entrance and exit from his or her land across the respondent's land or otherwise to an already established public road. The petition shall be accompanied by the written notice given to the respondent and any copies of abstracts, deeds, or plats referenced in the petition. (A.C.A. §27-66-401)
- After the petition is filed, the county court shall issue a notice setting the time, date, and location of a preliminary hearing. The preliminary hearing cannot be earlier than sixty days from the date of the petition's filing. (A.C.A. §27-66-401)

- The landowner must serve the respondent with a summons, a copy of the petition, a copy of any exhibits, and a copy of the court notice of the preliminary hearing. If service is not obtained, the notice shall be published in the county newspaper. (A.C.A. §27-66-401)
- At the preliminary hearing, the court may either dismiss the case or appoint viewers. If the case is not dismissed, then the court shall give each party ten business days to submit up to three potential viewers. Out of these potential viewers, the court shall select one viewer from each party. A third viewer shall be selected directly by the court. The viewers shall lay out and describe the access easement in a manner that produces the least inconvenience, damage, and devaluation of the respondent's land. (A.C.A. §27-66-401, 402)
- Once the viewers are appointed, the court shall issue a preliminary order directing the landowner to deposit into the registry of the court an estimated sum sufficient for the payment of the viewers' fees and expenses, survey costs, damages, and notice and publication costs. The court shall also set the time, date, and location of the evidentiary hearing. The evidentiary hearing cannot be earlier than sixty days from the date of the petition's filing (A.C.A. §27-66-401, 403)
- The viewers will submit a report describing the route of the road and, by decision of a majority of the viewers, the damages sustained by the respondent. (A.C.A. §27-66-402)
- Each party shall be given at least ten business days to respond in writing to the viewers' report. (A.C.A. §27-66-402)
- After the evidentiary hearing, if the court is of the opinion that it is necessary for the landowner to have the road, then an Order will be made establishing the road, not to exceed 50 feet in width, and determining the damages sustained by the respondent. (A.C.A. §27-66-403)

### **Maintenance of Roads**

The county will sometimes perform maintenance such as culvert installation or grading on a public road that has not been accepted into the county maintenance system. Such maintenance does not establish that road as anything other than a public road, and does not obligate the county to perform future maintenance on the same road or any other road. (AG Opinion No. 91-434)

No person shall construct, reconstruct, alter, remove, or replace any portion of a road, curb, gutter, drainage structure, or driveway abutting a dedicated street within the County without first obtaining a permit from the County Judge. (Faulkner County, Arkansas Ord. 07-15)

## **Access to Roads**

The County Judge, under Amendment 55, § 3 of the Arkansas Constitution, has the authority to regulate the use and obstruction of county and public roads. These regulations are enacted to prevent damage to road surfaces as well as to provide safety to residents.

### **Weight and Vehicle Restrictions**

For a total period not to exceed 90 days in any one calendar year, the County Judge may prohibit the operation of vehicles or impose restrictions as to the weight of those vehicles used on a highway when their continued use, by reason of climatic condition, will damage or destroy the road. (Faulkner County Ord. 08-11 and A.C.A. § 27-35-103) When climatic conditions are not in consideration, the County Judge may still restrict the use of heavy equipment by oil and gas companies. Oil and gas companies must notify the County Judge of their intention to drive heavy equipment on any road within Faulkner County. If these companies intend to drive on a county road, then they must first file a reasonable bond with the county to cover any damages that may occur. (Faulkner County, Arkansas Ord. 07-10 and A.C.A. § 27-66-507) When oil and gas companies use a public road that is in between a state highway and their disposal facility, a surface or injection well facility designated for the disposal of materials and production fluids, the County Judge may, provided that the county does not have a road maintenance agreement, evaluate the use and anticipated damage caused to the public road and report his or her findings to the quorum court. This evaluation must be done annually. The quorum court may then propose an assessment ordinance for a maximum amount of \$5.00 per load of materials or fluids which pass through the evaluated public road. All revenue generated by this assessment will be used for maintenance and repair. (A.C.A. § 14-16-801 et seq) Other vehicles that are subject to regulation by the County Judge include those that use corrugated, spiked, jointed, or other rough-surfaced metal tires. The use of these tires on a public highway is prohibited unless a license is procured from the County Judge. (A.C.A. § 27-66-502) A person using these tires without a license is guilty of a misdemeanor and will be fined up to \$500 dollars. (Faulkner County, Arkansas Ord. 80-25)

### **Obstruction**

Blocking any road other than an individual's private road without authority to do so is a Class C misdemeanor. (A.C.A. § 5-71-214) After notification to remove an obstruction from a county or public road has been given, the person blocking the road shall be fined \$100 every day that the obstruction remains. (A.C.A. § 27-66-404) With each day the obstruction continues, the person blocking the road shall be fined up to \$250.00. This fine is in addition to the initial fine of not more than \$250.00. (Faulkner County, Arkansas Ord. 80-25)

### **Abandonment of Roads**

Any ten or more citizens residing near a county road that they deem useless may petition the county court to vacate the road. (A.C.A. §14-298-102 through 104, 117) This starts a process set out in the statutes mentioned above, outlined as follows:

- Previous to any petition being filed, notice must be given in the county newspaper. (A.C.A. §14-298-102)
- The petition must give the starting point, intermediate points, and termination point of the road, along with any other description available. (A.C.A. §14-298-104) The petition must also state the reason or reasons why the road should be vacated. (A.C.A. §14-298-117)
- The petition must be accompanied by a bond signed by at least one of the petitioners, to reimburse the county for any claims that may be sustained for lands taken. (A.C.A. §14-298-103)
- The petitioners shall serve all landowners on the subject road with notice of the hearing and the petition.
- After proof that proper notice and publication was given, the petition must be publically read at a regular session of the county court. (A.C.A. 14-298-117)
- If objections to the petition are made, the county court shall appoint three viewers who will submit a report in favor or against vacating the road. If their report is in favor of vacating the road and the court deems the report reasonable and just, the court may, at the next regular session, declare the road or a part of the road vacated. (A.C.A. §14-298-117)
- If no objections to the petition are made, the county court may, at the next regular session, declare the road or a part of the road vacated. (A.C.A. §14-298-117)

A road may be abandoned by non-use. If a road is not used for a period of seven years or longer, it is the right of the owner of the land to re-enter the road and exclude the public from its use. (AG Opinion No. 2003-174)