COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITOL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

OAG 17-011

May 19, 2017

Subject: Whether the Scott County Fiscal Court may accept a street as a county road and deem such acceptance a correction of its prior denial, and whether the Scott County Fiscal Court may accept any street that does not meet the minimum street standards as set forth by the county.

Requested by: Glenn M. Williams
Scott County Attorney

Written by: S. Travis Mayo

Syllabus: The Fiscal Court may not accept a road or street as a county road unless the street meets the requirements set forth in KRS 178.010. The Fiscal Court may not retroactively accept as a county road a private street that it previously denied acceptance for as a county road and which is not shown to currently meet the requirements set forth in KRS 178.010(3). The Fiscal Court may not accept any street that does not meet the requirements set forth in KRS 178.010.

Statute construed: KRS 178.010

Opinion of the Attorney General

Glenn M. Williams, the Scott County Attorney, has requested an opinion of this office regarding a street that the Scott County Fiscal Court denied acceptance of as a county road in 2009. In his request, Mr. Williams states that a local corporate developer has requested that the Scott County Fiscal Court ("Fiscal Court") accept a street that was placed into service a number of years ago, and constructed to county standards and dedicated for acceptance in 2009, but for which the Fiscal Court officially denied acceptance in 2009. According to

Mr. Williams, the street has fallen into disrepair and the developer has informed the Fiscal Court that it does not have sufficient funds to bring the street back to county standards. Specifically, Mr. Williams has requested an opinion as it relates to two questions:

(1) Can the Fiscal Court now accept the street as a county road and deem the acceptance a correction of the 2009 denial?; and

(2) Can the Fiscal Court now accept any street that does not meet the minimum street standards as set forth by the county?

We advise that in order for a public road to be a county road, the Scott County Fiscal Court must formally accept the road as a part of the county road system. KRS 178.010(1)(b). Thus, a road that may be "public" is not automatically a "county road." A private road, street, or highway may become a county road if the Fiscal Court has accepted it as a gift, which the Fiscal Court may only do if the private road, street or highway meets the minimum construction standards the Fiscal Court has established. *Id.* If a private road, street, or highway does not meet the minimum construction standards the Fiscal Court has established, the Fiscal Court may not accept the street, road, or highway as a gift under KRS 178.010(3), which would preclude the Fiscal Court from making the private road, street, or highway a part of the county road system. In addition, no statutory authority exists to allow the Scott County Fiscal Court to retroactively accept a street that it previously rejected, through formal order, as becoming a part of the county road system.

I. The Fiscal Court Must Formally Accept a Public Road as a Part of the County Road System To Make the Road a County Road.

Pursuant to KRS 178.010(1)(b), "county roads" are "public roads which have been formally accepted by the fiscal court of the county as a part of the county road system, or private roads, streets, or highways which have been acquired by the county pursuant to [KRS 178.010(3)] or KRS 178.405 to 178.425." Thus, a Fiscal Court may create a county road in two ways: (1) formally accepting a public road as a part of the county road system, or (2) accepting a private

road, street, or highway, by gift if the private road, street, or highway has been constructed to meet minimum construction standards the Fiscal Court has established. KRS 178.010(1)(b). With regard to a public road, a formal order of the Fiscal Court is required to establish such a road as a county road. *Kentucky Properties Holding LLC v. Sproul*, 2016 WL 5239670, *4 (Ky. Sept. 22, 2016) (*citing Sarver v. Allen County, By & Through Its Fiscal Court*, 582 S.W.2d 40, 41 (Ky. 1979) (*citing Rose v. Nolen*, 179 S.W. 229, 230 (Ky. 1915)); *Porter v. Johnson County Judge/Executive*, 357 S.W.3d 500, 503 (Ky. App. 2010); *Blankenship v. Acton*, 159 S.W.3d 330, 333 (Ky. App. 2004) (*citing Sarver*, 582 S.W.2d at 41)). *See also* OAG 88-59; 82-228; OAG 82-136; OAG 80-489. Thus, a road that may be "public" is not automatically a "county road," but must meet the requirements for becoming a "county road." *See Sproul*, 2016 WL 5239670, at *4; *Sarver*, 582 S.W.2d at 41. While a road may become a public road in various ways,[1] a public road becomes a county road only when the Fiscal Court formally accepts it as one. KRS 178.010(1)(b).

According to the information Mr. Glenn provided in his request for an opinion, the Scott County Fiscal Court denied, by formal order, acceptance of the street at issue as a county road in 2009. In his request, Mr. Glenn did not specify the street at issue or its location in Scott County, and he did not delineate whether the street is a private street or a public road. Regardless of these uncertainties, the fact of the Fiscal Court's denial of the street as a county road in 2009 means the street is not currently a county road.

---

[1]*See* KRS 178.020 ("Every road, street, and alley, used and occupied as a public road, street, or alley, shall be presumed to be a public road, street, or alley, as the case may be."); KRS 178.025(1) ("Any road, street, highway, or parcel of ground, dedicated and laid-off as a public way and used without restrictions on a continuous basis by the general public for fifteen (15) years, shall conclusively be presumed to be a public road."); KRS 178.080 (allowing any person to petition the fiscal court for the establishment or alteration of a public road); KRS 178.115(1) ("Whenever the fiscal court of any county deems it to be in the best interest of the county to open, establish or alter the location of any public road, street, alley ... or similar public way or structure in the county, the fiscal court shall adopt a resolution setting forth the necessity for the public road or structure, and thereupon the public road or structure shall be deemed opened, established, or altered, as the case may be, on behalf of the county.")

II. The Fiscal Court May Make a Private Street a County Road If the Street Meets the Minimum Construction Standards of the Court.

While the Scott County Fiscal Court formally rejected the street as a county road in 2009, if the street is a private street the Fiscal Court may acquire it pursuant to KRS 178.010(3). KRS 178.010(1)(b). As KRS 178.010(1)(b) states, other than through the formal acceptance by a fiscal court, a county road may also be a private road, street, or highway that a county may acquire pursuant to KRS 178.010(3), or KRS 178.405 to 178.425.[2]

Under KRS 178.010(3), "on and after July 13, 2004, a fiscal court may only accept a private road, street, or highway by gift if the private road, street, or highway has been constructed to meet minimum construction standards established by the fiscal court." In his request, Mr. Glenn stated that the street at issue met the county construction requirements in 2009, but has since fallen into disrepair. If the street has fallen into disrepair and does not now meet the county construction requirements, the Scott County Fiscal Court cannot accept the street as a gift and establish it as a county road under KRS 178.010(3).

III. The Fiscal Court Also Possesses Authority to Establish a Public Road.

While the Scott County Fiscal Court may not accept the street, if it is a private street, as a gift unless it meets the requirements of KRS 178.010(3), the Fiscal Court may establish or open the street as a public road if it meets the requirements of KRS 178.080 or 178.115. The Fiscal Court has the power to open, establish, or alter a public road by resolution when it deems it to be in the best

---

[2] Based on the information Mr. Glenn included in his request, the provisions of KRS 178.405 to 178.425 do not apply to the street at issue. In pertinent part, KRS 178.405 provides that, "When any private road, street, or highway in an unincorporated area in any county has been used by the general public openly, continuously, and notoriously for a period of at least fifteen (15) years, it shall be implied that such road, street, or highway may be dedicated to public use; Provided, that fifty-five percent (55%) of all property owners abutting the private road, street, or highway sign a petition stating that they are willing to dedicate the road, street, or highway to public use." According to Mr. Glenn, the street at issue was initially constructed and dedicated for acceptance in 2009. As KRS 178.405 to 178.425 do not apply, if the street at issue is a private street it may only become a county road through application of KRS 178.010(1)(b) and 178.010(3).

interest of the county. KRS 178.115(1). In the resolution, the Fiscal Court must set forth the necessity for the public road, which deems the road opened, established, or altered. *Id.* A certified copy of the resolution shall be posted at the door of the county courthouse within five (5) days after its adoption, and the county road engineer must also post a copy of the resolution along or at the proposed road within the same time frame.

Further, any person may petition the Fiscal Court for the establishment or alteration of a public road. KRS 178.080(1). Under that statutory provision, the Fiscal Court must appoint two (2) viewers who, along with the county road engineer, must view the ground and report in writing the advantages and disadvantages that will result to the petitioner and the public from the proposed work and grades and bearings of the proposed road. *Id.* The viewers and the county road engineer must also report in writing other facts and circumstances that may allow the Fiscal Court to determine whether the county should undertake the work. *Id.* If the petition relates to a public road leading from a main public road, the report must set forth additional information, and the viewers and the county road engineer must meet additional requirements. KRS 178.080(2). The Fiscal Court must personally examine the proposed work it appears to the court that the interests of the general public may be furthered by it. KRS 178.080(3). Upon deciding to undertake the work, the Fiscal Court shall schedule a day for a hearing the interested parties and give notice of the hearing to the parties. *Id.*

Pursuant to KRS 178.100, a party aggrieved by a decision of the Fiscal Court refusing an order to open a new road may contest that decision by bringing an action in the circuit court of the county where the road is located. Based upon the information Mr. Glenn provided in his request, no party contested the decision of the Scott County Fiscal Court denying the acceptance of the street as a county road. However, if the street were to become a public road under KRS 178.080 or 178.115, the public road could become a county road upon the Fiscal Court's formal acceptance of the road as a part of the county road system. In addition, if the street is located within a city of Scott County, the county could enter into an agreement with the city, pursuant to KRS 65.210 to 65.300, to perform work on the street, or to provide personnel, materials or equipment for such work. KRS 178.010(4).

III. Conclusion

In summary, if street at issue is a public road, the Scott County Fiscal Court must accept the road as a part of the county road system in order for it to become a county road. If the street is a private street, the Scott County Fiscal Court may accept the private street as a gift, and thereby make it a county road, if the street meets the minimum construction standards the Fiscal Court has established. If the private street does not currently meet those standards, the Fiscal Court may not accept it as a gift and may not make it a county road under KRS 178.010.

ANDY BESHEAR
ATTORNEY GENERAL

S. Travis Mayo
Assistant Attorney General