

PROCEDURE FOR DESIGNATING COUNTY ROADS

Much case law exists on prescriptive right-of-way, prescriptive easement, and eminent domain problems in Arkansas, but very little legislation (state law) exists on the subject.

Attorney General's Opinion No. 86-184 - Generally, a property owner has a right to exclude anyone and everyone from his land. However, if the public has continuously used these roads, under certain circumstances, it may have acquired a right to continue such use by "prescriptive easement." Clinton Chamber of Commerce v. Jacobs, 212 Ark. 776, 207 S.W. 2d 616 (1948).

It is well settled that where a highway is used by the public for a period of more than seven (7) years, continuously and adversely, the public acquires an easement by prescription or limitation of which it cannot be dispossessed by the owner of the fee.

Clinton, supra, at page 777. See also, Fullenwinder v Kitchens, 223 Ark. 442, 226 S.W. 2d 281 (1954). More recently, In Sebastian Lake Development v. United Tel. Co., 240 Ark. 76, 398 S.W. 2d 208 (1966), at page 83, the Court set out the standard to determine when such use ripens into a right as follows:

Where there is usage of a passageway over land, whether it began by permission or otherwise, if that usage continues openly for seven (7) years after the landowner has actual knowledge that the usage is adverse to his interest or where the usage continues for seven years after the facts and circumstances of the prior usage are such that the landowner would be presumed to know the usage was adverse, then such usage ripens into an absolute right.

Whether the public has acquired a prescriptive easement is a fact question to be determined on a case-by-case basis. If the owners close these roads, it is incumbent upon their former users to timely file suit in circuit court to assert their claim of a prescriptive easement or they may abandon this right by non-use. Clinton Chamber of Commerce, supra.

Direct routes to county courthouse may be designated county roads - The county judge may, in his discretion, designate as a county road any road that is the most direct route to the county courthouse for ten (10) or more families, and which road is graded and has been used by the general public as a road for at least two (2) years. (ACA 27-66-204)

Mail routes may be designated county roads - The county judge, may in his discretion, designate a county road that is used as a mail route or a free rural mail delivery route if such road is designated as such mail route by the proper postal authorities of the United States Government. (ACA 27-66-205)

School bus routes may be designated as county roads - The county judge may, in his discretion, designate as county roads, roads used as school bus routes. (ACA 27-66-206)

Maintenance and repair of designated roads - Upon declaring a road a county road pursuant to this Act, (ACA 27-66-207), the county judge shall take charge of such road and cause such road to be maintained and repaired the same as other county roads. (ACA 27-66-206)

Street becomes public road upon dedication - The county judge, in his discretion, may designate as a county road any street or road dedicated to the public as a public thoroughfare, provided that a bill of assurance making such dedication is properly recorded. (ACA 27-66-207)

Land becomes public road upon delivery of deed to county or district - The county judge may, in his discretion, designate as a county road any strip of ground deeded by the owners to the county for a public thoroughfare. (ACA 27-66-208)

If the public obtains the right to use a road through adverse possession the municipality or county in which the road is located shall have the authority to maintain the road. (ACA 14-296-101)