

April 25, 2006
OPINION NUMBER 06-0004

Mr. Terry J. Manuel
Assistant District Attorney
Fourteenth Judicial District
Calcasieu Parish
1020 Ryan
P.O. Box 3206
Lake Charles, LA 70602

50-HIGHWAYS
LRS 48:491 B (1)(a)

Tacit dedication of streets and roads under LRS 48:491B(1)(a) may only be claimed by a parish or a municipality after the three year maintenance period and the Corps of Engineers and/or FEMA may not claim tacit dedication after entry for hurricane cleanup.

Dear Mr. Manuel:

You have requested an opinion of this office concerning the entry onto private property by the Corps of Engineers (the "Corps") and/or Federal Emergency Management Agency ("FEMA") for the purpose of hurricane cleanup and trash removal. Specifically you have asked if this cleanup constitutes maintenance under Louisiana Law such "that after any maintenance over a period of three years the government has a servitude over the property."

The only relevant statute, other than general acquisitive prescription provisions of the Civil Code, is LRS 48:491 B(1)(a) which states,

All roads and streets in this state which have been or hereafter are kept up, maintained, or worked for a period of three years by the authority of a parish governing authority within its parish, or by the authority of a municipal governing authority within its municipality, shall be public roads or streets, as the case may be, if there is actual or constructive knowledge of such work by adjoining landowners exercising reasonable concern over their property.

This statute controls the concept of tacit dedication only for roads and streets and is only valid for parish or municipal maintenance for a period of three years. The

OPINION NO. 06-0004

Mr. Terry J. Manuel
Assistant District Attorney
Page No. 2

case law for tacit dedication is extremely fact sensitive, however the statute would not apply to the Corps and/or FEMA, unless those entities were keeping up, maintaining, or working pursuant to the authorization of a parish or municipal government. In such cases the appropriate parish or municipality shall acquire the property interest accorded by R.S. 48:491.

We trust that this answers your inquiry.

Yours very truly,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY: _____
CHARLES PERRY
Assistant Attorney General

cc: Mr. Adam G. Nunez, Esq.

CCF,Jr./CFP/tr

OPINION NO. 06-0004

Mr. Terry J. Manuel
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Page No. 2

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DATE REQUESTED: January 3, 2006

DATE RELEASED: April 25, 2006

REQUESTED BY: Terry J. Manuel
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