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State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

September 11, 2015
OPINION 15-0109

The Honorable Dorothy Sue Hill
State Representative
District 32
529 Tramel Road
Dry Creek, LA 70637

50 HIGHWAYS- Roads
88 POLICE JURIES- In General

La. R.S. 33:1236(2)(a); 33:4717(A)

Ferguson Road, situated partly in Concordia Parish, is a public road and is owned by the Concordia Parish Police Jury. As such, the Concordia Parish Police Jury can only abandon this road if it proves that it no longer serves a public purpose. Such abandonment does not authorize the transfer of the road to a private party.

Dear Representative Hill:

You have requested an Attorney General's opinion regarding a proposed abandonment of a public road by the Concordia Parish Police Jury ("Concordia"). According to the facts presented in your request, a road known as Ferguson Road ("Road") is partially situated in Concordia Parish and partially in Tensas Parish. In order to reach the Tensas portion of the Road, it is necessary to travel across the Concordia portion of the Road.

In 2002, Concordia undertook an action by which it believed that it had abandoned the section of the road under its jurisdiction. Subsequently, Tensas Parish landowners filed a lawsuit against Concordia and the purported private landowner who requested the abandonment.¹ On May 26, 2015, the Seventh Judicial District Court rendered a declaratory judgment ("Judgment") determining that Concordia's abandonment was null and void. The Judgment specifically decreed that "the section of the Ferguson Road, which is the subject of this Judgment is a public road and is owned by the Concordia Parish Police Jury."²

As Concordia is now considering abandoning the same section of the Road, you pose a number of questions, which will be answered in the order in which they were presented.

1. Can Concordia abandon its portion of the Road if such portion is being used by Tensas to maintain the Tensas part of the road?

As an initial matter, we note that the term "public road" includes those roads that are owned in full ownership by a public entity and also those privately owned roads over which the public has only a right of passage (servitude).³ According to the facts presented, the subject road is a public road owned by Concordia Parish.⁴ As such, the

¹ *Zimmerman Farms, LLC. v. Davis, et al.*, Docket No. 47,985, Div. A, Seventh Judicial District Court.

² Judgment at 2. According to the Clerk of Court's records, the Judgment was not appealed.

³ La. Atty. Gen. Op. No. 08-0334.

⁴ Judgment at 2.

Road can only be abandoned when it is no longer needed for public purposes.⁵ See *Robinson v. Beauregard Parish Police Jury*, 351 So.2d 113 (La. 1977); *Luneau v. Avoyelles Parish Police Jury*, 196 So.2d 631 (La. App. 3rd Cir. 1967).

Whether a road serves a public purpose is a decision generally left to the discretion of the local public authority, but that body cannot act in an arbitrary or capricious manner in deciding whether to abandon a road.⁶ As noted in *Luneau* and in *Robinson, supra*, an interested party or parties may challenge the abandonment in court and such abandonment must be overturned if it can be proved that the public still uses the thoroughfare.

Although this office's opinion cannot substitute for a court's factual conclusion, according to the scenario presented in your request, it appears that even the Concordia section of the Road serves a public purpose because "[a]ny person exercising the use of Ferguson Road must travel across the Concordia Parish portion of the road in order to reach the Tensas Parish portion of the road." However, if Concordia can prove that the Road is no longer needed for a public purpose, the Road ceases to be public and becomes a private thing of the political subdivision.⁷ After this determination, the private thing is alienable but only in accordance with the applicable law. Specifically, La. R.S. 33:4717(A) authorizes police juries to dispose of public property no longer needed by the public to certain other governmental entities. This provision reads, in pertinent part (emphasis added), as follows:

Wherever, in the opinion of the governing authority of any parish or municipality, any immovable property, not taken by expropriation, owned by such parish or municipality, including streets, sidewalks, buildings, or any other property, dedicated to public use, shall no longer be needed or necessary for the public use to which it was originally destined or dedicated, and which property is needed for public buildings, public utilities or any other public use, by the United States of America, or the state of Louisiana, or any department or agency of either, or any parish or municipality, the governing authority of such parish or municipality shall have the power and authority, upon a two-thirds vote of the members present thereof, to revoke the destination or dedication of such property, and to sell at private sale to the United States of America, the state of Louisiana, or any department, or agency thereof, or any other parish or municipality, by which such property shall be needed for public buildings, public utilities, or other public use.

⁵ Note that because Concordia enjoys full ownership of the Road, it cannot rely on La. R.S. 48:701 to revoke the dedication of this road because this statute applies only to property that has been dedicated by private parties (via servitude), not to property that is publicly-owned. La. Atty. Gen. Op. No. 14-0030A.

⁶ La. Atty. Gen. Op. No. 02-0091, citing *Jeffries v. Police Jury of Rapides Parish*, 53 So.2d 157 (La.App. 2 Cir.1951).

⁷ La. Atty. Gen. Op. No. 09-0023, citing, Yiannopoulos, 2 *La. Civ. Law Treatise*, Property, § 52 (4th ed.) (2008); *Walker v. Coleman*, 540 So.2d 983, 986 (La. 1989).

Thus, under the facts presented, while Concordia may be able to alienate the Road by declaring it as private property owned by the parish, it cannot simply give or sell the Road to a private party. Concordia's only option in such a case is to sell the Road to another governmental entity (e.g., Tensas Parish).

2. Can Concordia abandon its portion of the Road if the road is being used by seven Tensas Parish landowners as their only means of access to their property?

In *Luneau*, the court found that an order of a parish police jury directing abandonment of an established public road constituted abuse of discretion where it appeared that the abandoned road constituted the only means by which one landowner could enter or leave his property. Also, in La. Atty. Gen. Op. No. 07-0043, this office determined that a parish road that dead-ends at a resident's home does not warrant abandonment of a public road for failure to serve a public purpose. Thus, it is our opinion that, because the Concordia section of the Road constitutes the only means of ingress and egress for seven Tensas Parish landowners, it follows that its abandonment without showing that its use is not for a "public purpose," is questionable.

3. Can Concordia maintain ownership of its portion of the Road, but abandon any obligation which it has to repair and maintain its portion of the Road?

La. R.S. 33:1236(2)(a) empowers police juries to regulate the making and repairing of roads when, in the opinion of the police jury, such work will further the best interests of the parish and the parish road system. Thus, if Concordia can prove that the Road does not serve a public purpose, then it has discretion to abandon its maintenance. In that case, the Road will cease to be a thing held by Concordia in its public capacity and will become a private thing of the political subdivision that may be alienated only pursuant to La. R.S. 33:4717(A).⁸

In sum, the Ferguson Road situated in Concordia Parish is a public road and is owned by the Concordia Parish Police Jury. As such, the Concordia Parish Police Jury can only abandon the Road if it proves that the Road no longer serves a public purpose.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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⁸ La. Atty. Gen. Op. No. 09-0023.

By: */s/ Ryan M. Seidemann* 
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