



Jeff Landry
Attorney General

State of Louisiana

DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
70804-9005

June 28, 2023
OPINION 23-0060

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50 HIGHWAYS - Roads
90 POLICE JURIES - Powers & Functions

La. Const. art. VI, sec. 9
La. R.S. 48:481

La. R.S. 48:491
La. R.S. 48:701

Whether activity is sufficient to satisfy the requirement of "kept up, maintained, or worked" in La. R.S. 48:491(B)(1)(a) is a question of fact to be determined on a case-by-case basis. Moreover, the Police Jury may pass an ordinance setting forth objective criteria for what constitutes "kept up, maintained, or worked" within the borders of Union Parish so long as that ordinance does not conflict with State law.

Dear Ms. Breithaupt:

On behalf of the Union Parish Police Jury ("the Police Jury"), you have requested an opinion regarding road maintenance and the designation of roads as public. Specifically, you have asked the following two questions:

1. What types of activities are included in the phrase "kept up, maintained, or worked" in La. R.S. 48:491(B)(1)(a) and does the Police Jury have discretion to determine whether a road has been "kept up, maintained, or worked for a period of three years?"
2. Can the Police Jury pass an ordinance setting forth specific standards for what constitutes the public effort to satisfy the "kept up, maintained, or worked" requirement of La. R.S. 48:491(B)(1)(a)?

Your questions are answered in order below.

What types of activities are included in the phrase "kept up, maintained, or worked" in La. R.S. 48:491(B)(1)(a) and does the Police Jury have discretion to determine whether a road has been "kept up, maintained, or worked for a period of three years?"

Prior opinions of this office conclude that what constitutes sufficient work by a public entity on a particular road to meet the requirement of La. R.S. 48:491(B)(1)(a) that the road be, "kept up, maintained, or worked for a period of three years" is a fact-based inquiry that should be determined on a case-by-case basis. *See e.g.*, La. Atty. Gen. Op. No. 14-0104. We see no reason to depart from that conclusion in this opinion. What exact activity satisfies this standard is not delineated in Louisiana Jurisprudence. Louisiana courts have

indicated, certain activities such as token maintenance and the occasional brushing up of a road fall below the standard, but have never articulated a bright-line rule for the standard.¹ In your request letter, you recite the following examples of what courts have found insufficient to constitute “kept up, maintained, or worked:”

(i) a road was not tacitly dedicated when the only work done was that the “road was actually just scraped by the grader to smooth any existing ruts,” *Rowe v. Harvey*, 307 So.2d 103 (La.App. 1 Cir. 1974), (ii) that regular grading was “more than token maintenance and thus the road is a public road,” *Beard v. Beauregard Parish Police Jury*, 78 So.2d 625, 628 (La. App. 3 Cir. 1979), and (iii) that a road was tacitly dedicated where the police jury graded the road three times a year and occasionally cleaned the sides of ditches, *Boynnton v. Bertrand*, 309 So.2d 769, 770-71 (La. App. 3 Cir. 1975); see also La. Atty. Gen. Op. No. 77-1624 (noting that “the jurisprudence construing R.S. 48:491 has consistently held that an occasional ‘brushing up’ or token maintenance of private property does not establish a tacit dedication”).²

More recent jurisprudence has not illuminated this matter further,³ and there is still no bright-line rule for determining what is sufficient maintenance under the law to constitute tacit public dedications of roads.⁴ Accordingly, it is our continued opinion that whether activity is sufficient to satisfy the requirement of “kept up, maintained, or worked” in La. R.S. 48:491(B)(1)(a) is a question of fact to be determined on a case-by-case basis.

Can the Police Jury pass an ordinance setting forth specific standards for what constitutes the public effort to satisfy the “kept up, maintained, or worked” requirement of La. R.S. 48:491(B)(1)(a)?

Louisiana Revised Statute 48:481 states that, “[p]arish governing authorities may pass all ordinances which they think necessary relative to roads, bridges, and ditches, and may impose such penalties to enforce them as they think proper.” Thus, as a basic matter, the Police Jury has broad authority and discretion to pass ordinances relating to tacit road dedications, subject only to the general caveat that ordinances cannot traverse state law.⁵

¹ *Robinson v. Beauregard Parish Police Jury*, 351 So.2d 113, 116 (La. 1977); *Mizell v. Willis*, 2020-0915 (La.App. 1 Cir. 7/29/21), 329 So.3d 302, 307 (citing *IP Timberlands Operating Co. v. DeSoto Par. Police Jury*, 552 So.2d 605, 607 (La.App. 2 Cir. 1989); *Guzzardo v. Campo*, 486 So.2d 912, 914 (La.App. 1 Cir. 1986), writ denied, 488 So. 2d 1026 (La. 1986)).

² Letter from Evelyn I. Breithaupt, Esq. to Jeff Landry, Attorney General, dated May 5, 2023 at 2 (citing La. Atty. Gen. Op. No. 81-942).

³ *Mizell v. Willis*, 2020-0915 (La.App. 1 Cir. 7/29/21), 329 So.3d 302, 307 (citing *IP Timberlands Operating Co. v. DeSoto Par. Police Jury*, 552 So.2d 605, 607 (La.App. 2 Cir. 1989); *Guzzardo v. Campo*, 486 So.2d 912, 914 (La.App. 1 Cir. 1986), writ denied, 488 So. 2d 1026 (La. 1986)).

⁴ *C.f.*, *Martin v. Cheramie*, 264 So.2d 285 (La.App. 4 Cir. 1972) (shelling and grading was sufficient to satisfy the dedication requirements).

⁵ La. Const. art. VI, sec. 9.

In La. Atty. Gen. Op. No. 08-0334, we opined that certain minimum standards for the inclusion of roads into a public road system established by law must be followed. These minimum standards would represent state law that cannot be preempted by ordinance. We are aware of no statutory or regulatory definition of what constitutes the public efforts to satisfy the “kept up, maintained, or worked” requirement of La. R.S. 48:491(B)(1)(a). Moreover, as is set forth above, there also appears to be no judicial guidance defining this standard. As long as the Police Jury does not pass an ordinance that traverses any existing state minimum standards, it is our opinion that the Police Jury could promulgate an ordinance setting forth objective criteria for what constitutes “kept up, maintained, or worked” within the borders of Union Parish.⁶

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of further assistance, please do not hesitate to contact us.

With best regards, I am,

Very truly yours,

JEFF LANDRY
ATTORNEY GENERAL

By: 

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JL/RMS/cw

⁶ Accord La. Atty. Gen. Op. No. 83-181 (noting that a parish or municipality may revoke a road dedication). La. R.S. 48:701. Certainly, if a parish or municipality can revoke a road dedication, it may also place conditions on the acquisition of such dedications under the maxim, *qui potest plus, potest minus* (he who can do more can do less). See also La. Atty. Gen. Op. No. 16-0145.