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ATTORNEY GENERAL

STATE OF LOUISIANA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 94005
BATON ROUGE, LA
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April 23, 2025
OPINION 24-0137

90-B-1 PUBLIC LANDS - State Lands Homestead; Rights of Way, Transfer

The Honorable Ronnie Festavan
Mayor, Town of Vivian
P.O. Box 832
Vivian, LA 71082

La. R.S. 33:3062
La. R.S. 33:3521
La. R.S. 38:1767
La. R.S. 38:1794

La. Const. art. I § 4
La. C.C. art. 646
La. C.C. art. 651
La. C.C. art. 667
La. C.C. art. 744

Dear Mayor Festavan:

When the drainage district does not have authority over the roadside ditches, the Town is responsible for the maintenance of any ditches which it owns or over which it enjoys servitude. Private citizens are responsible for maintaining ditches on their property that are not subject to a servitude. The Town may compel private citizens to cut the grass in their ditches through the enforcement of Vivian Codes § 8.31-8.36.

You have requested an opinion from this office addressing who is responsible for the maintenance and upkeep of the grass, weeds, and other wild growth that grows in the ditches alongside the roads in the Town of Vivian ("the Town").

Question: Who is responsible for cutting the grass, weeds, and wild growth in the ditches that are adjacent to the Town's roads and streets?

Conclusion: It is the opinion of this office that the party responsible for cutting the grass, weeds, and wild growth from these ditches depends on who owns or controls the ditch at issue. The Town is responsible for maintaining ditches owned by the town and ditches over which the town enjoys a servitude. Maintenance of ditches owned by private citizens over which the Town does not enjoy a servitude is the responsibility of the private citizen owner. The Town may compel private citizens to cut the grass in their ditches through the enforcement of Code of Ordinances, Town of Vivian, Louisiana, §§ 8-31 - 8-36.

You acknowledge in your opinion request that the roadside ditches in the Town may be owned by the Town or by private citizens. In addition, you recognize that the Town may have a servitude over some of the ditches. Accordingly, we will address the following three categories of ditches: 1) ditches owned by the Town; 2) ditches over which the Town enjoys a servitude; and 3) ditches owned by private citizens over which the Town does not enjoy a servitude.

As a preliminary matter, we note that the Town is located within the Caddo Parish Gravity Drainage District No. 1. Caddo Parish Code § 44-303. According to La. R.S. 38:1767 and 38:1794(D), the drainage district has control over the ditch, if any of the roadside ditches in question are within the drainage district. In La. Atty. Gen. Op. No. 07-0085, our office opined that La. R.S. 38:1767 and 38:1794(D) "are illustrative of the fact that a drainage

district's board of commissioners has the authority to perform all necessary work associated with the maintenance of the drains, ditches, and canals within its district.”

With regard to roadside ditches owned by the Town, we note that ownership inherently carries the obligation of maintenance. See La. C.C. art. 667. Louisiana Revised Statute 33:3521 reinforces this by granting municipalities the authority to order improvements to drainage ditches or performing other necessary work. In addition, the Town has passed an ordinance requiring the owner, his agent, or other person in control of any lot, place, property or area with the Town to cut, destroy or remove weeds or grass, or other deleterious, unhealthy, or noxious growths or accumulations within a height of equal to or greater than twelve inches, lying or located in or upon any such lot, place, property, or area or on any sidewalk abutting any such lot, place, property, or area. Code of Ordinances, Town of Vivian, Louisiana, § 8-31. Therefore, any maintenance or improvements of ditches owned by the Town would be its responsibility.

We next address the ditches over which the Town enjoys a servitude. Louisiana Civil Code article 651 states, in part, “[t]he owner of the servient estate is not required to do anything. His obligation is to abstain from doing something on his estate or to permit something to be done on it.” In addition, La. C.C. art. 744 provides, “[t]he owner of the dominant estate has the right to make, at his expense, all the works that are necessary for the use and preservation of the servitude.” We further note that Louisiana courts have determined that expenses such as maintenance of the servitude may only be assigned to the servient owner by contractual agreement. *Markel v. Price*, 2023-0704 (La. App. 4 Cir. 5/30/24), 391 So.3d 30, 31; *Sharp v. St. Tammany Par. Ex rel. Dep't of Pub. Works*, 2006-0815 (La. App. 1 Cir. 2/14/07), 2007 WL 466777, at *2 (unpublished). Thus, the Town has the obligation to maintain the ditches over which it enjoys a servitude.

It should also be noted, however, that even though the Town may enjoy a servitude over a road, whether that servitude extends to the roadside ditches depends upon how that servitude was acquired. For example, servitudes acquired through the application of La. R.S. 48:491 do not extend to roadside ditches. See La. Atty. Gen. Op. No. 84-332A.

Lastly, there are the ditches which the Town neither owns nor has a servitude. In these instances, a private owner of property has the right to enjoy the property as he sees fit subject to reasonable statutory restrictions.¹ The Legislature has enacted reasonable statutory restrictions under La. R.S. 33:5062:

. . . The governing authority of any municipality may enact ordinances requiring that property be maintained in a safe and sanitary condition, including ordinances providing for the cutting, destruction, or removal of noxious weeds or grass or other deleterious, unhealthful, or noxious growths on any sidewalks or banquettes and on any lot, place, or area within the municipality. . . .

¹ La. Const. art. I § 4

In accordance with this statute, the Town has enacted Code of Ordinances, Town of Vivian, Louisiana, §§ 8-31-8-36. Therefore, the Town has the power to compel the private owners of the roadside ditches, over which the Town enjoys no servitude, to cut the grass in the ditches in accordance with these ordinances.

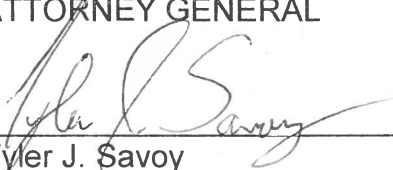
Considering the foregoing, it is the opinion of this office that the Town is responsible for the maintenance of any ditches which it owns or over which it enjoys servitude. Private citizens are responsible for maintaining ditches on their property that are not subject to a servitude. The Town may compel private citizens to cut the grass in their ditches through the enforcement of Code of Ordinances, Town of Vivian, Louisiana, §§ 8-31-8-36.

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

With best regards,

LIZ MURRILL
ATTORNEY GENERAL

BY: _____


Tyler J. Savoy
Assistant Attorney General

LM:TJS