Private Roads, use of public equipment to repair

Number: INFORMAL

Date: May 30, 2013

Mr. Thomas M. Shuler
Franklin County Attorney
40 4th Street
Apalachicola, Florida 32320

Dear Mr. Shuler:

Thank you for your letter of May 3, 2013, requesting this office's assistance in determining whether Franklin County may use its personnel, equipment, and materials to affect repairs to private dirt roads. Attorney General Bondi has asked me to respond to your letter.

Your letter presents various scenarios and factual issues which have been addressed over the years in a number of previously issued Attorney General Opinions. The courts of this state and this office have concluded that public funds may only be spent for the construction, maintenance, or repair of *public roads*.[1] In Attorney General Opinion 92-42, this office stated that the fact certain public vehicles, such as school buses, were permitted to travel on a private road did not authorize a county to expend county funds to repair and maintain the road when the general public was not allowed to travel on it.

A governmental entity, therefore, may use public funds for the construction, maintenance, or repair of a road only when the road is a "public" road. This office has concluded that a "public" road is one open to and set apart for the public, as contrasted to a private road which by its nature is not open to the public and upon which the public has no right to travel.[2]

I am enclosing several previously issued Attorney General Opinions dealing with the issue of construction, maintenance, or repair of public roads and under what circumstances public funds may be expended for those purposes. Because this office has a large number of opinions on this topic, you may wish to visit our website to read through them and determine which may be helpful in the various situations that may present themselves. Please go to www.myfloridalegal.com and then to the Legal Resources / AG Opinions section. This is a searchable database of previously issued Attorney General Opinions dating from 1971. Additional historical material may be accessed if your research indicates an Attorney General's Opinion issued prior to 1971 would be helpful. This older material is also available on our website.

I trust that the copies I am enclosing will be helpful to you in advising the county commission and that we may have the opportunity to work with you in the future.

Sincerely,

Gerry Hammond

Senior Assistant Attorney General

GH/tsh

Enclosures: Ops. Att'y Gen. Fla. 12-33 (2012), 02-48 (2002), 99-15 (1999), and 92-42 (1992); Inf. Op. to Feagle dated 9/9/11

---

[1] *See Padgett v. Bay County*, 187 So. 2d 410 (Fla. 1st DCA 1966); *Collins v. Jackson County*, 156 So. 2d 24 (Fla. 1st DCA 1963); Ops. Att'y Gen. Fla. 99-15 (1999), 94-89 (1994), 78-88 (1978), 75-309 (1975), and 73-222 (1973). *Cf. Lovey v. Escambia County*, 141 So. 2d 761 (Fla. 1st DCA 1962) (county's maintenance of road for more than four years raised presumption of dedication).

[2] Ops. Att'y Gen. Fla. 99-15 (1999).