



A SELECTED READING

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Dedication of Lands

Dedication, in real property law, is an appropriation of land to some public use, made by the owner, and accepted for such use by or on behalf of the public. A dedication may be **express**, as where the intention to dedicate is expressly manifested by a deed or declaration of the owner of his or her intention to donate the land to public use. Or, the dedication may be **implied**. An implied dedication may be shown by some act or course of conduct on the part of the owner from which an inference of the intent to dedicate may be drawn.

McQuillin defines “dedication” as “the owner’s offer, either express or implied, of appropriation of land or some interest or easement therein to the public use, and acceptance thereof, either express or implied (when acceptance is required).”

The Court, in *Manning v. House*, 211 Ala. 570, 100 So. 772 (1924), defined the term by stating, “A dedication is a donation or appropriation of property to public use by the owner, accepted by the public. It may be in writing or in parol; may be evidenced by words or acts; by one declaration or unequivocal act; or by a course of conduct evincing a clear purpose to dedicate.” In *Newsome v. Morris*, 539 So. 2d 200 (Ala. 1988), the court upheld the use of parole evidence to prove a dedication of property.

History

The principle of dedication was known to the common law. Dedications are classified as **common law** and **statutory**. The difference between the two consists in the mode of proof. Statutory dedications are necessarily express, while common law dedications may be express or implied.

Municipal corporations in Alabama have the authority to accept or reject grants or dedications of property. Section 35-2-51, Code of Alabama 1975, provides that the recording of plats or maps (recorded in probate court) shall be a conveyance of the areas marked or noted thereon as donated or granted to the public. The premises intended for street, alleyway, common or other public use, as shown, shall be held in trust for the uses and purposes intended. Section 35-2-52, Code of Alabama 1975, requires a probate judge to decline to receive for record any map or plat upon which any lands lying within the corporate limits or police jurisdiction of any city having a population of 10,000 or more inhabitants are platted or mapped as streets, alleys or public ways, unless such map or plat shall have noted thereon the approval of the governing body or city engineer. In *Tuxedo Homes, Inc. v. Green*, 63 So. 2d 812 (1953), the court held that the recording of the map or plat **does not add** to its effect as an acceptance of the dedication. [Emphasis supplied.] See also *CRW, Inc. v. Twin Lakes Property Owners Association, Inc.*, 521 So. 2d 939 (Ala. 1988).

A good discussion of the law regarding dedication is found in the Alabama Supreme Court case of *Ritchey v. Dalgo*, 514 So. 2d. 808 (Ala. 1988).

Elements of Dedication

It is essential to a dedication that the land is owned by the person making the offer and it is necessary that the owner intends to dedicate the land or some interest therein. Equally vital is the act of acceptance for or on behalf of the public by proper authorities.

The offer or intention to dedicate does not have to be in writing. It may arise from an oral dedication or be manifested by acts that reveal the intent to dedicate the property. In *Town of Leeds v. Sharp*, 218 Ala. 403, 118 So. 572 (1928), the Court considered the validity of an alleged common-law dedication and stated that, “To establish such a dedication the ‘clearest intention’ on the part of the owner must be shown. . . .”

The Court elaborate on this in *Oliver v. Water Works & Sanitary Sewer Board*, 261 Ala. 234, 73 So.2d 552 (1954), noting that “It requires some distinct act by the city to constitute an acceptance, such as a formal resolution or by acts and conduct of the city authorities recognizing it as a dedicated street. After the city has accepted its dedication there are certain duties

and responsibilities imposed by statute upon the city.”

Because of these responsibilities, and the potential liability exposure municipalities face if they fail to adequately meet those responsibilities, municipal officials should carefully weigh the risks before accepting the dedication of property or an easement.

No specific grantee needs to exist at the time dedication is made since the “public” is an ever-existing grantee capable of taking a dedication for public uses.

Purposes of Dedication

Courts recognize dedication of streets, highways, alleys, public squares, parks, cemeteries, public wharves and landings, schoolhouses and public buildings. Sewers, drainage ditches and wells may be subject to dedication.

The owner dedicating land to the public may impose reasonable conditions, restrictions and reservations on the dedication, provided those conditions are not inconsistent with the uses or purposes for which the land is dedicated. The recipient, by accepting the dedication, agrees to such conditions or restrictions.

Intentions and Acts of Dedication

The vital principle underlying a dedication is the **intention** to dedicate. Courts have ruled that the “clearest intention” to dedicate must exist. In *City of Birmingham v. Graham*, 202 Ala. 202, 79 So. 574 (1918), the court held that there should be an “unequivocal act of the owner of the fee manifesting the intention that it shall be accepted and used presently or in futuro.”

The existence of an intent to dedicate, or the lack of an intent to dedicate, must be resolved from the facts of a particular case. Such facts may be shown by either positive or circumstantial evidence. See *Manning v. House*, 100 So. 772 (Ala. 1924).

Intention is easily shown by proof of a written instrument--for example, a plat or map placed on record. In *Burton v. Johnson*, 222 Ala. 685, 134 So. 15 (1931), the court held that “the platting and sale of lots with reference to such map was per se a dedication of this parcel ...” Even though a map is insufficient to satisfy statutory requirements, if places on the map are shown as streets, alleys, parks, etc., it is said to be evidence of intention to dedicate after the map is recorded. The proprietor of the land, if lots are sold in conformity to the map, would be estopped to deny a dedication as against his purchasers. The municipality must still accept the dedication, however, before it becomes effective.

The intention to dedicate may also be shown by recitals in a deed in which the rights of the public are recognized. Additionally, in a few cases, the court has found that uninterrupted use by the general public of a roadway--when there is no evidence to contradict the presumption of dedication--shows an intention to dedicate. See *Newell v. Dempsey*, 219 Ala. 513, 122 So. 881 (1929). In these circumstances, however, the use must be shown to have been with the knowledge and consent of the owner. This type of case is important in the law relating to prescriptive rights.

Evidence showing lack of intention on the part of the owner to dedicate is admissible. *Thomas v. Vanderslicc*, 201 Ala. 73, 77 So. 367 (1929). The burden of proof to establish a dedication is on the party asserting it and it is never presumed in the absence of evidence of an unequivocal intention on the part of the owner.

However, once a dedication is made, it generally cannot be withdrawn unless statutory procedures are followed. In *Pritchett v. Mobile County*, 958 So.2d 349 (Ala. Civ. App. 2006), the Court of Civil Appeals held that a county’s alleged failure to use a right-of-way, which was dedicated for public use as a roadway, did not cause the right-of-way to be vacated. After there has been a proper dedication to the public, that dedication is irrevocable, and it cannot be altered or withdrawn except by statutory vacation proceedings.

Acts of Acceptance

As stated above, there must be something on the part of the public entity showing an intent to accept the dedication in question. In *Ivey v. City of Birmingham*, 190 Ala. 196, 67 So. 506 (1914), the court declared that “The owner of the property through which this street was originally laid off could not impose his dedication of the street upon the public by platting the territory and disposing of lots according to the plat. He thereby made it a way, irrevocable as to purchasers; but to devolve upon the public the duty of maintaining the way as a public road or street it was necessary that there should be an acceptance by the public of the dedication.” Acceptance requires some distinct act by the city or conduct of the city authorities recognizing the declaration. *Oliver v. Water Works and Sanitary Sewer Board*, 261 Ala. 234, 73 So. 2d 552 (1954).

Mere acceptance of a plat for recording is not in itself sufficient to complete the dedication. *Tuxedo Homes v. Green*, 258 Ala. 494, 63 So. 2d 812 (1953).

Acceptance may arise by express act, by implication from acts of municipal officers and by implications from uses by the public for the purpose for which the property was dedicated. Without doubt, an ordinance or resolution of the governing body in accepting a dedication would be sufficient. But an ordinance or resolution is not necessary to show acceptance of the dedication.

In *City of Birmingham v. Graham*, 262 Ala. 202, 79 So. 574 (1918), the court enumerated methods of acceptance as follows: "... that it must be by competent authority; that it may be evidenced in several ways: (1) by deed or other records; (2) by acts that operate as an estoppel in pais; or (3) by long continued use on the part of the public in such wise that a dedication and acceptance is presumed."

As early as 1881, the court, in *Steele v. Sullivan*, 70 Ala. 586 (1881), held:

"Such acceptance by a town or city may be manifested, among other methods, by long and uninterrupted use by the public without objection; by the expenditure of corporate money or labor in repairs, and by recognition of the street or alley in the official maps of the municipality, prepared under their authority or direction."

In view of the decisions in several later cases, though, there may be doubt as to the accuracy of the last sentence, depending on how "official" the map is made by the municipality.

The length of time of use of streets and ways is usually not as important as the character of the use. In *Valenzuela v. Sellers*, 246 Ala. 329, 20 So. 2d 469 (1944), the court stated:

"True, it [the alleyway in dispute] might not have been to any great extent used by the traveling public, but as was observed in *Still v. Lovelady*, it is the character rather than the quantum of use that controls."

In new subdivisions, streets normally connect with existing public streets and become extensions of the streets. Since municipal authorities almost invariably approve and supervise the type of construction used in new streets, those streets are, in fact, accepted when joined to existing streets and opened to use by the public.

The general rule is that proof of acceptance by the public must be unequivocal, clear and satisfactory and consistent with any other consideration. See *Mobile v. Chapman*, 79 So. 566 (Ala. 1918).

Use of Dedicated Lands

In general, property dedicated to the public must not be used except for the purpose named. The court, in *City of Troy v. Watkins*, 78 So. 50 (1918), quotes with approval:

"A public highway cannot be used in a manner foreign to its dedication and any encroachment thereon or use thereof which is inconsistent with some purpose will constitute a nuisance which may be enjoined."

It is permissible for the dedicator and dedicatee to change the purposes of the dedication. However, if the interests of a third person have intervened and would be damaged by the change, consent of the third party is also necessary.

A dedication of property to a municipality under Section 35-2-50 and Section 35-2-51, Code of Alabama 1975, cannot be revoked unless statutory vacation procedures are followed. *Montabano v. City of Mountain Brook*, 653 So. 2d 947 (Ala. 1995).

An abandonment is generally a question of fact, but abandonment of a part is not an abandonment of the whole. Non-use is usually not considered as abandonment.

Parks

Land may be dedicated and accepted for public use as a park. Often, a landowner may subject the grant to conditions and restrictions and the municipality may receive lands so conditioned. If the condition requires the use of the property as a public park subject to reverter, an abandonment of the park may work a reversion of the title.

The park lands may be utilized in any manner consistent with use as a park, such as construction of playgrounds for children, tennis courts, flower gardens or other recreational areas.

Municipalities may adopt reasonable rules and regulations for the use and protection of the parks. Such regulations may establish speed limits for driving in the park or may establish hours for opening and closing. See Section 11-47-22, Code of Alabama 1975.

Provisions Relating to Parks

In 1956, Section 94 of the Constitution was amended (Amendment 112) to provide that the Legislature might enact general, special or local laws authorizing political subdivisions and public bodies to alienate, with or without a valuable consideration, public parks and playgrounds conditioned upon the approval of a majority of the duly-qualified electors voting at an election held for such purpose. In keeping with this authority, the Legislature enacted the law now found at Sections 35-4-410 through 35-4-412, Code of Alabama 1975. These statutes establish the procedures for publishing the terms of the proposed conveyance and the holding of a referendum election to determine the desire of the electorate.

Section 11-47-22 authorizes municipalities to exercise police jurisdiction over all lands purchased or acquired for parks.

Sections 11-47-20 and 11-47-21 authorize sales and leases of property "not needed or public or municipal purposes." In *Moore v. City of Fairhope*, 277 Ala. 380, 171 So. 2d 86 (1965), the Alabama Supreme Court limited the usefulness of Section

11-47-20, Code of Alabama 1975, where a public entity is attempting to alienate dedicated park property. In that case, the city attempted to dispose of park lands upon which the court found there had been a common law dedication and longtime use by the public. The decision turned on the question:

“... does [this section] confer upon the city power and authority to convey to a private individual or corporation property within its corporate limits which has been subject to a common-law dedication for use by the public as a park? We think not ... Indeed, as we construe [this section] the legislature has not attempted to authorize the sale of property held by the city in trust such as that with which we are dealing.”

In *Mobile County v. Isham*, 695 So.2d 634 (Ala. Civ. App. 1996), the Court of Civil Appeals held that because the county failed to show that it had accepted property dedicated to it as a park before the property owner divided the property into lots and sold them, the dedication was revoked and the county cannot now claim ownership of the property.

Abandoned Streets and Unneeded Property

Generally, the owner of the abutting property of a street owns the fee to the middle (medium line) of the street but subject to the easement of the public. If the public way is abandoned, the abutting owner may normally reclaim the property since it has been freed of the easement. In view of this general rule, it is a mistake for a municipality to assert ownership to the fee in such an abandoned street until the title is thoroughly searched. The rights of a municipality in a public way are generally limited to the surface and so much of the depth as is customarily used, as streets are used, for example, for sewers, drains, cables and so forth. See *Citronelle v. Gulf Oil Co.*, 270 Ala. 378, 119 So. 2d 180 (1960).

If a municipality has acquired its right of way by condemnation, it is possible that it will own the entire fee, depending on the eminent domain proceeding at time of the acquisition. Ordinarily, a municipality, by condemnation, merely acquires an easement for public street purposes.

Caution is the watchword before committing a municipality to any course of conduct regarding the disposal of unneeded property until the full facts are ascertained as to the extent of the city's title. Section 94 of the Constitution of Alabama of 1901 prohibits a municipality from giving away public property. Therefore, if the city does, in fact, have a right to dispose of property it must be for an adequate consideration.

Court Decisions and Opinions of the Attorney General

A city has the statutory authority to accept the dedication of streets, roads, and utilities of a privately owned condominium complex that is incorporated in a subdivision within the city that has mixed zoning. AGO 2008-131.

Acceptance by the county governing body was unnecessary for public dedication of roads in a subdivision outside the city limits or police jurisdiction. By completing and recording the plat in compliance with statutory requirements, the developer dedicated the roads to the public. A road can be made public in one of three ways: (1) a regular proceeding for that purpose, (2) a dedication of the road by the owner of the land it crosses, with acceptance by the proper authorities or (3) the way is generally used by the public for twenty years. *Harper v. Coats*, 988 So.2d 501 (Ala. 2008).

A city may enter into an agreement with the YMCA of a county for the YMCA to provide services to its citizens in exchange for the use of city property. Whether the property has been dedicated as a public park is a factual determination to be made by the city. AGO 2017-024.

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