Overview of Drainage Law in Alabama and How the Law Impacts Municipalities

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Municipalities in Alabama receive many requests from private property owners for assistance with drainage matters on their property. These requests may range from cleaning out a drainage ditch in the backyard of a private residence to replacing a corrugated pipe in a private easement outside of the road right-of-way that was installed by a developer many years ago. When drainage issues occur on private property, it may be the first instinct of the property owner is to turn to a municipality for assistance. However, municipalities in Alabama are under no obligation to and typically are prohibited from fixing drainage issues on private property. In fact, under the Public Purpose Doctrine, municipalities are prohibited from using government funds for the betterment of private property or a single individual. This article is intended to provide information on the current status of drainage law in Alabama in order to assist municipalities as they navigate such drainage requests.

Drainage – generally

Under established "drainage law" in Alabama, a municipality is not required to maintain drainage areas which a municipality does not voluntarily choose to maintain. In the state of Alabama, municipalities are authorized to construct and maintain storm water sewers or sewer drainage systems, but a municipality is not required to exercise this authority, and generally, "has no duty to provide and maintain proper drainage of surface water from a resident's property to prevent flooding and damage to the property." However, Alabama municipalities may be held liable for damages caused by their negligence in operating and maintaining *public* sewers and drains. This liability is restricted to sewers and drains controlled or accepted by the municipality. The liability does not extend to sewers and drains on private property which the municipality did not construct or accept for perpetual maintenance.

Section 11-50-50 of the Alabama Code states:

> All cities and towns may make all needful provisions for the drainage of such city or town, may construct and maintain efficient sanitary and stormwater sewers or sewer systems, either within or without the corporate limits of the city or town, may construct and maintain ditches, surface drains, aqueducts, and canals and may build and construct underground sewers through private or public property, either within or without the corporate limits of such city or town, but just compensation must first be made for the private property taken, injured, or destroyed.

When this statute has been challenged by private citizens, Alabama courts have held that "[n]othing in [this] statute authorizing Alabama municipalities to construct and maintain sanitary sewer systems indicates the establishment of a duty to maintain the sewer lines coming from the residence of private landowners to the primary sewer line." Additionally, "municipalities are not subject to liability for the failure to inspect the sewer lines of private landowners."

Public Purpose Doctrine

Not only is there no duty to maintain stormwater sewers and drains on private property, but municipalities are prohibited by the Alabama Constitution from spending public money on private property, unless the expenditure is deemed to fulfill a "public purpose." Section 94 of the Alabama Constitution prohibits the Legislature from granting counties, cities, and towns the power to lend credit, grant money, or give any other thing of value to aid an individual, association, or corporation, except as otherwise provided. In *Slawson v. Alabama Forestry Commissioner*, the Alabama Supreme Court interpreted Section 94 to allow the expense of public revenues on private property in aid of an individual, association, or corporation only when appropriation is for a "public purpose." Therefore, if the expense is for a public purpose, a county, city, or town may contribute public funds for construction or repairs on private property.

A "public purpose" promotes the public health, safety, morals, security, prosperity, contentment, and general welfare of the community. There is no fixed definition of what qualifies as a "public purpose." Instead, the term "public purpose is a flexible phrase which expands to meet the needs of a complex society even though the need was unheard of when our State Constitution was adopted in 1842." The Alabama Supreme Court has formulated the test to determine whether an expenditure serves the public purpose. The court stated:

> The paramount test should be whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit … The trend among the modern courts is to give the term "public purpose" a broad expansive definition.

Whether or not an expenditure serves a public purpose is a factual determination within the legislative domain. Thus, the determination should be made by the local governing body on a case-by-case basis.

For expenditures on privately owned stormwater sewers or drains to serve a public purpose, the property owner must first dedicate the land to the local governing body for public use. This process, known as "dedication," may be express or implied. A dedication by a property owner is express when "the intention to dedicate is expressly manifested by a deed or declaration of the owner … to donate the land to public use." Conversely, an implied dedication is shown by "some act or course of conduct on the part of the owner from which an inference of the intent to dedicate can be drawn."

To finalize the dedication and complete the dedication process, the local governing body must then accept the land for the public use. To accept the land for public use, a municipality must respond

to the property owner's dedication in some way that shows an intent to accept the dedication in question. Generally, proof of acceptance must be unequivocal, clear, and satisfactory and consistent with any other consideration. A property owner cannot simply impose dedication on the local municipality. Instead, acceptance of the property owner's dedication requires some distinct act by the municipality. Acceptance can arise by express act of the governing body accepting the dedication (such as a formal resolution), by implication from acts taken by the city (such as repeated and continual maintenance of the dedicated area), or by implication from public use of the property for the purpose for which the property was dedicated.

A municipality's mere approval of a plat of land is not sufficient on its own to show acceptance of a dedication of the proposed streets, alleys or other public places shown thereon. For example, if a municipal planning commission approves subdivision plans which show an area dedicated for drainage, this does not mean the drainage areas have been accepted by the city or that the city has a responsibility to maintain the drainage ditches. Approval of a subdivision plat merely shows that the plat meets municipal regulations for the development of a subdivision. A municipality must do something beyond just accepting the subdivision plans for the drainage ditches to be considered accepted by a city.

Drainage within the Control of a Municipality

Municipalities may be held liable for damages caused by their negligence in the operation and maintenance of stormwater drains within their control if the municipality does not properly maintain such stormwater drains. Once a municipality decides to construct a drainage system, a duty of care arises and a municipality can be liable for damages that stem from negligence relating to the upkeep of the drainage system. In *City of Mobile v. Jackson*, the court found that when a municipality constructs drainage systems, a duty of care arises for upkeep to be maintained properly, and a municipality may be liable for any damages stemming from negligence. A municipality can be liable for damage that is a result of negligence in the construction, maintenance, or operation of the drainage system. The acceptance of an easement or right-of-way where a drainage easement lies, may then make a municipality responsible for upkeep of the easement and liable for any damage caused by failure to keep the easement in good condition. Courts have found municipalities liable because of municipal actions taken regarding drainage within municipal control. For example, if a municipality has incorporated waterways into their drainage system, the municipality may then have a duty to maintain the natural waterway. In *Lott v. City of Daphne*, the City had constructed a series "of underground pipes and junction boxes that eventually discharge[d] storm water from the area…into the head of Mazie's Gulch." Because the City had incorporated the gulch into the drainage system, the court found that the City may now have a duty to maintain and upkeep the system around the gulch. The court further explained that for a city to be found liable for damages resulting from incorporating the waterways into the city's system, "it must be shown that the water from the City's drainage system, rather than the natural drainage of surface water, caused the damage."

When Implied Acceptance of Private Drainage has not Occurred

As previously stated, a municipality that has not expressly accepted the dedication of a drainage easement from a property owner does not have a duty to maintain the drainage easement. Occasional work by a municipality on a drainage easement to alleviate drainage problems does not obligate the municipality with a duty to continually repair or work-on the drainage within the easement as long as the city has not expressly accepted the easement for perpetual maintenance. If a municipality is asked to perform work on private property that the municipality has not accepted, the municipality may complete this work without running the risk of accepting all future work if the private owner repays the municipality for all labor, materials, and equipment used for the work. This work may be completed even if the project benefits only a single individual and serves no public purpose—if there is a repayment in full of all costs associated with the job.

The Alabama Supreme Court has stated that the occasional cleaning and removal of debris from a drainage system does not constitute undertaking the maintenance of a drainage system. In *Hursey v. City of Mobile*, the court refused to impose liability on Mobile. The city had only cleared the ditch in question twice in the past ten years, and the court determined this was not enough to qualify as implied acceptance. Similarly, in *Royal Automotive, Inc. v. City of Vestavia Hills*, the court refused to impose liability on either city because, the court said, the cities had not assumed a duty related to Patton Creek. *Royal Automotive* shows that clearing a ditch three times over a period of twenty plus years is not sufficient to impose a duty on a city to upkeep a system, however, the court has not explicitly said how many instances of clearing a ditch will be enough to impose liability.

Courts have also refused to impose liability on municipalities when a ditch is naturally occurring and the municipality has only responded to emergency calls to clear out the ditch. In *City of Dothan v. Sego*, the court reversed a summary judgment entered against the City of Dothan because the City had not constructed the ditch at issue and only cleared the ditch when called to the property in emergency situations. The court found that this minimal interaction with the property does not arise to the level required to impose liability on the city.

Conclusion

To date, courts have been hesitant to impose drainage liability on municipalities that have not expressly accepted drainage for perpetual maintenance or constructed a drainage system on their own. This is because municipalities cannot, under the Alabama Constitution complete work on private property that is not for the benefit of the public at large. It may also be because imposing drainage liability on a municipality for drainage maintenance not voluntarily assumed by a municipality – either expressly or impliedly – could cause severe financial hardship on the municipality. Courts may, however, impose liability on municipalities if there has been an implied acceptance of a drainage area such as the situation where a municipality has continually and repeatedly maintained a drainage area through work completed thereto. For this reason, municipalities should exercise caution in performing drainage maintenance on private property if the

municipality does not wish to incur perpetual drainage liability in such areas. ■

1. Hendrix v. Creel, 297 So.2d 364, 367 (Ala. 1974).
2. Ala. Op. Att'y Gen. No. 97-00249 (Aug. 4, 1997).
3. See generally City of Dothan v. Sego, 646 So.2d 1363 (Ala. 1994) (holding that because the City of Dothan did not construct the ditch at issue and did not undertake a duty to exercise due care in maintaining the ditch, the plaintiffs could not support a negligence action against the city).
4. ALA. CODE § 11-50-50.
5. Langley v. City of Saraland, 776 So.2d 814, 816 (Ala. Civ. App. 1999).
6. Id. at 816–17 (citing Rich v. City of Mobile, 410 So.2d 385 (Ala. 1982)).
7. ALA. CONST. art. IV, § 94.
8. Id. The Alabama Supreme Court has stated "the evil to be remedied is the expenditure of public funds in aid of private individuals or corporations, regardless of the form which such expenditures may take." Opinion of the Justices, 49 So.2d 175, 178 (Ala. 1950).
9. Slawson v. Alabama Forestry Commissioner, 631 So.2d 953, 956 (Ala. 1994).
10. Ala. Op. Att'y Gen. No. 2009-105 (Sept. 18, 2009).
11. Opinion of the Justices, 384 So.2d 1051, 1053 (Ala. 1980) (quoting Opinion to the Governor, 308 A.2d 809 (R.I. 1973).
12. Id.
13. Id.
14. Id. at 1052.
15. Ala. Op. Att'y Gen. No. 2005-029 (Dec. 13, 2004).
16. Ala. Op. Att'y Gen. No. 2005-073 (Feb. 24, 2005). Generally, whether an expenditure serves a public purpose should be decided prior to spending the money. However, there are instances where money can be spent to repair issues on private property before having approval. For example, in the aftermath of a hurricane, a town council did not have to wait to remove trees and other debris from private property that extended onto public roadways. Instead, the state of emergency allowed for approval to take place later. Ala. Op. Att'y Gen. No. 2005-029 (Dec. 13, 2004).
17. 17. Ala. League of Municipalities, Dedication of Lands, 436.
18. 18. Id.
19. 19. Id.
20. 20. See generally Mobile v. Chapman, 79 So. 566 (Ala. 1918).
21. 21. Ala. League of Municipalities, Dedication of Lands, 436.
22. 22. Id. See Oliver v. Water Works and Sanitary Sewer Bd., 73 So.2d 552, 553 (Ala. 1954) (finding that the mere approval of a plat is not an acceptance, but instead the city must do some distinct act to constitute an acceptance such as a formal resolution or acts by city authorities).
23. Tuxedo Homes v. Green, 63 So.2d 812 (Ala. 1953).
24. Ala. Op. Att'y Gen. No. 83-00302 (May 3, 1983).
25. Ala. Op. Att'y Gen. No. 2005-077 (Mar. 1, 2005).
26. Ala. Op. Att'y Gen. No. 83-00302 (May 3, 1983).
27. Ala. Op. Att'y Gen. No. 97-00249 (Aug. 4, 1997).
28. Id.
29. Ala. Op. Att'y Gen. No. 80-00172 (Jan. 23, 1980).
30. Id.
31. Royal Automotive, Inc. v. City of Vestavia Hills, 995 So.2d 154, 160 (Ala. 2008).
32. Hursey v. City of Mobile, 406 So.2d 397, 398 (Ala. 1981).
33. Id.
34. Royal Automotive, Inc., 995 So.2d at 160.
35. Id. at 160. The City of Vestavia Hills had dredged Patton Creek three times over twenty-three years, but the court opined that these occasional cleanings were not enough to say the City had assumed a duty. The City of Hoover, likewise, had occasionally cleaned the creek after requests from citizens, but the court said cleaning occasionally as a response to requests was insufficient to support a finding that the City undertook a duty to maintain the creek.
36. Sego, 646 So.2d at 1366.
37. Id.
38. Id.
39. ALA. CONST. art. IV, § 94.

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