

MEMORANDUM

**FROM:** OFFICE OF THE CITY ATTORNEY  
MIDDLETOWN, CONNECTICUT 06457

**TO:** Salvatore C. Fazzino, Public Works Director

**DATE:** August 10, 1999

**RE:** Legal Opinion Request

QUESTION PRESENTED:

Whether the unimproved portion of Stantack Road, Middle Road, Lower Road, Topper Road, Old Lamentation Mountain Road, Massatom Road (also known as Middle Street and Middle Street South) and an unnamed road network on Mount Higby are City streets.

ANSWER:

The roads appear to be paper streets which have not been accepted, formally or otherwise, by the City.

ANALYSIS:

Generally, two elements are necessary in order for a road to become a public highway – dedication and acceptance. There must be a manifested intent on the part of the owner to dedicate the land for public use as a road and there must be an acceptance by the municipality of the road as a public highway. Acceptance by the municipality can be either express or implied. Fuller, Land Use Law and Practice, Conn. Practice Book Vol. 9, at §49.2 (1993/1998 Supp.).

Express acceptance of public highways is a statutory procedure. C.G.S. §13a-48, as amended. The procedure mandates a report by the City's Planning & Zoning Commission and acceptance of the street by the Common Council. *Id.*; C.G.S. §8-24, as amended.

The Public Works Department has advised that the City does not have deeds to any of the roads in question nor any other records concerning a formal acceptance of the roads. Consequently, it does not appear that there was an express acceptance of the roads in question.


Connecticut case law demonstrates that implied acceptance is established by public use of the roadway over a significant period of time or by conduct of the municipality. Meshberg v. Bridgeport City Trust Company, 180 Conn. 274 (1980); Katz v. Town of West Hartford, 191 Conn. 594 (1983); Ventres v. Town of Farmington, 192 Conn. 663 (1984). Conduct demonstrating acceptance includes grading and paving the road, maintaining and improving it,

assessing abutting property owners for improvements, snow removal, installing storm or sanitary sewers, lights, curbs or sidewalks. Meshberg, supra; Katz, supra. None of these characteristics are present in the instant situation.

The information provided to the Public Works Commission describes some use of the roads. This use does not appear to rise to the level contemplated by the Connecticut Supreme Court. "The general public must make general use without interference over a sufficiently long period of time that it shows a claim of right to use the road." Meshberg, supra, at 282; Johnson v. Town of Watertown, 131 Conn. 84 (1944); Wamphassuc Point Property Owners Association v. Public Utilities Commission, 154 Conn. 674 (1967). "Slight use by the public of a paper road does not constitute acceptance by the public." Ventres, supra at 667-68.

Even assuming, for the sake of argument, that the roads at issue are public streets the City would not be compelled to improve them. Judge Fuller notes that "[a] common misconception of municipal officials is that if they recognize an old road as a public highway that the town will then have the duty to improve it at its own expense." Fuller, supra, at §49.6.

"The condition in which a town has to keep its highways depends upon the extent of public use, the location of the road, the availability of funds for repairs and other circumstances. A road must serve some public benefit for public funds to be spent on it, and a town does not have to appropriate money for repair of roads serving only a private interest. The proper condition of a highway depends primarily upon the amount of public travel over it." Fuller, supra, citing Howe v. Town of Ridgefield, 50 Conn. 592 (1883); Congdon v. City of Norwich, 37 Conn. 414 (1870); Canastota Knife Company v. Newington Tramway Company, 69 Conn. 146 (1897).

  
\_\_\_\_\_  
Timothy P. Lynch  
Deputy City Attorney

TPL/es

**REQUEST FOR OPINION, ADVICE OR OTHER LEGAL SERVICE**

(Submit to Mayor in Duplicate)

**TO: MAYOR'S OFFICE**  
**FROM: Public Works Commission**  
**SUBJECT: Roads (Unmaintained)**

**FACTS:** (In brief Statement tell WHO, WHAT, WHEN, WHERE, WHY & HOW).

Property owners fronting unimproved, unmaintained roads requested that the Public Works Commission improve the roads so that emergency vehicles (fire trucks, etc.) Can access the properties. The five (5) roads have been referred to as five (5) mountain roads; four (4) on Lamentation Mountain and one (1) on Mt. Higby. The names of said roads are Massatom Road, North Stantack Road, Lower Road, Middle Road and Topper Road. Data submitted to Public Works Commission by property owners is enclosed.

**LAW:** (Cite appropriate ORDINANCE, REGULATION, STATUTE, OR CASE LAW that applies to this Question).

Documents submitted by Eleanor Kelsey, Lawrence Buck and Mary Kosko refer to Public Act 603, an act regarding highways, was passed by the Connecticut Legislature in 1961. Reference was also made to CGS 13a-55.

**QUESTION:** (What, in your own words, is the precise question you wish to have answered?)

Are the roads named above City roads or have they ever been City roads.

**ESTIMATE OF PRIORITY:** (Check one)

**EMERGENCY ACTION**

**STANDBY FOR FUTURE ACTION**

**URGENT**

**APPLICANT SHOULD KNOW FOR FUTURE ACTION**

Date: March 15, 1999

Signed

