

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 04-014

Responsibility for Maintenance of Reelfoot Running Bayou

QUESTION

Which governmental agency is legally responsible for maintaining the Reelfoot Running Bayou and for repairing and replacing any and all bridges across that water body, which runs through three West Tennessee counties?

OPINION

It is the opinion of this Office that the West Tennessee River Basin Authority is the entity responsible for maintaining and coordinating drainage work and flood control in the Reelfoot Running Bayou, subject to the review of a state task force. Any necessary bridge work affecting the bayou that the Basin Authority might propose would have to be performed by either TDOT or the relevant county in which the bridge is located.

ANALYSIS

You have inquired about which governmental agency or agencies are responsible for maintaining the Reelfoot Running Bayou, a watercourse that runs south from the spillway of Reelfoot Lake through Lake and Obion Counties and ends at the Obion River in Dyer County, Tennessee. We understand that improvements to this bayou were authorized by an act of Congress in 1954, based on flood control recommendations from the United States Army Corps of Engineers. River and Harbor Act, Pub. L. No. 780 (1954). One year later, in response to this congressional action, the Tennessee General Assembly enacted special legislation authorizing the dredging and maintenance of Reelfoot Running Bayou in Lake, Obion, and Dyer Counties. 1955 Tenn. Pub. Acts, ch. 133. This Tennessee law stated in pertinent part:

That in consideration of the United States Corps of Engineers dredging the stream above mentioned as aforesaid, the State of Tennessee, through its Department of Highways and Public Works, shall maintain such dredging after the conclusion of the original performance thereof in as reasonably good condition as it exists at the completion of such original dredging operations,

and shall likewise assume full responsibility for costs of repairing, maintaining, and relocating any or all bridges across such stream, replacement of which is occasioned by the work herein contemplated

1955 Tenn. Pub. Acts, ch. 133, § 1. This act further contemplated that the counties of Lake, Obion, and Dyer would procure any necessary rights of way to facilitate this operation. We understand, based on the documents provided with this request, that in the summer of 1955 each of these counties executed assurances pledging to provide the necessary land and easements for the construction of this project.

A few years later, the legislature passed another special act authorizing the Department of Highways and Public Works to oversee improvements for flood control and drainage in the Obion and Forked Deer Rivers and their tributaries in West Tennessee. 1959 Tenn. Pub. Acts, ch. 129. Like Chapter 133 of the Public Acts of 1955, this law designated the Department of Highways and Public Works to be the responsible sponsoring agency that would provide the necessary local cooperation and assume continuing obligations with respect to flood control and drainage improvements after the original project was completed by the Corps.

Although never codified, these two pieces of special legislation have been amended twice. First, in 1973, the General Assembly amended both laws by deleting the words “Department of Highways and Public Works” and substituting therefore the words “Department of Agriculture.” 1973 Tenn. Pub. Acts, ch. 38, §§ 2 and 5. Then, in 1974, the legislature amended them yet again by substituting the “Obion-Forked Deer Basin Authority” in place of the Department of Agriculture as the entity responsible for continuing obligations respecting flood control and drainage improvements in the Obion-Forked Deer Basin and the Reelfoot Running Bayou . 1974 Tenn. Pub. Acts, ch. 415, §§ 3 and 5.

Two years later, the Tennessee General Assembly enacted the statutes that defined the purposes and powers of the Obion-Forked Deer Basin Authority. 1976 Tenn. Pub. Acts, ch. 448 (then codified as Tenn. Code Ann. §§ 66-1-401 through 66-1-410). In so doing, the legislature recognized in its preamble to the enactment that the following had to be one of the law’s express goals:

Whereas, a sponsoring agency to carry out on a continuing basis the obligations assumed by the state of Tennessee must be created and funded directly to fulfill the governmental function of the state of Tennessee, as any other department thereof, *to comply with the requirements of Chapter 133 of the Public Acts of 1955 as amended and Chapter 129, Public Acts of 1959, as amended;*

1976 Tenn. Pub. Acts, ch. 448 (emphasis supplied). This law further specified that the Basin

Authority was to carry out the planning and operation for proper development of the Obion and Forked Deer River Basins in several West Tennessee counties, including Lake, Dyer, and Obion. 1976 Tenn. Pub. Acts, ch. 448, § 1 (previously codified as Tenn. Code Ann. § 66-1-401(b)).

But beginning with this enactment in 1976, the legislature made a series of changes with respect to the Basin Authority's obligations for the maintenance and construction of bridges. Despite the clear delegation of authority in Chapter 133 of the Public Acts of 1955 concerning the repair and maintenance of bridges, the 1976 law expressly stated that "the Authority shall not be responsible for the maintenance or construction of roads, highways, bridges or utility lines." 1976 Tenn. Pub. Acts, ch. 448, § 3 (previously codified as Tenn. Code Ann. § 66-1-403(2)(F)). In 1980, the General Assembly amended this specific provision by adding the following language in pertinent part:

The authority shall be responsible for the routine maintenance and restoration of existing bridges necessary to maintain such bridges for active use. . . . The authority shall not be responsible for any new bridge construction or bridge replacement. The authority shall not be responsible for routine maintenance or restoration of existing bridges on state and federal highways.

1980 Tenn. Pub. Acts, ch. 588, § 2. We assume this last sentence was inserted in recognition of the preexisting statutes in Title 54 authorizing the Tennessee Department of Transportation (TDOT) to designate and maintain a state system of highways, including roads and bridges. *See* Tenn. Code Ann. §§ 54-5-101 and 54-5-103.

Finally, in 1996, the legislature amended the statutes governing the Obion-Forked Deer Basin Authority (by then transferred to Title 64, Chapter 1, Part 4) by replacing that authority with a new one, now attached to the Department of Environment and Conservation and called the West Tennessee River Basin Authority. 1996 Tenn. Pub. Acts, ch. 890, codified at Tenn. Code Ann. §§ 64-1-1101 to 64-1-1111. This last legislation specified that the new Basin Authority was being created "to preserve the natural flow and function of the Hatchie, Obion and Forked Deer River basins" and to "provide regional and local leadership for the conservation and sustainable utilization of these river basins." Tenn. Code Ann. § 64-1-1101(b)(4). It also clarified that these activities were to be accomplished in a seventeen county area, including Lake, Dyer and Obion Counties. *Id.* Therefore, we believe the new Basin Authority is still responsible for maintaining and coordinating drainage work and flood control in the affected river basins, which include the Reelfoot Running Bayou.

But the 1996 enactment also amended the previous statutes governing the Obion-Forked Deer Basin Authority by deleting every one of those sections in their entirety, except for the provisions concerning the powers and duties of the Basin Authority and the provision on financing. These latter statutes, Tenn. Code Ann. §§ 64-1-403 and 64-1-404, were transferred to Tenn. Code Ann. §§ 64-1-

1103 and 64-1-1104 and amended by the 1996 act.

Significantly, in amending the powers and duties provisions, the legislature essentially deleted the language inserted by the 1980 amendment, concerning responsibility for bridge maintenance, and restored the 1976 language, so that Tenn. Code Ann. § 64-1-1103(12) now provides:

The powers, duties and functions of the board are as follows:

...

(12) Arrange with any city, county, state or supplier of utilities for the abandonment, relocation, or other adjustment of roads, highways and utility lines, *but the authority is not responsible for the maintenance, construction, or removal of roads, highways, bridges or utility lines;*

(Emphasis supplied.) Similarly, the 1996 amendment completely deleted the following language from subsection (a) of the financing provision of the 1976 act (formerly Tenn. Code Ann. § 64-1-404(a)(4)):

(4) The authority is a state entity and *shall carry out and perform the requirements and obligations imposed on the state by Acts 1955, ch. 133 and Acts 159, ch. 129, as amended*, with the United States government, in addition to the other duties provided for in this part, and the state shall fund the authority by direct appropriations as it is obligated to do by Acts 1955, ch. 133 and Acts 1959, ch. 129, as amended, the department of transportation and successor agencies and the department of agriculture in carrying out and performing these functions.

(Emphasis supplied.)

This 1996 legislation leads us to believe that the special legislation in Chapter 133 of the Public Acts of 1955 concerning Reelfoot Running Bayou has been repealed by implication, because the 1955 act specifically authorized the state to repair, maintain and relocate any and all bridges across that watercourse. Furthermore, the 1955 law has not been amended since 1996 to substitute the West Tennessee River Basin Authority in place of the Obion-Forked Deer Basin Authority as the entity responsible for continuing obligations respecting flood control and drainage improvements.

The legislature is always presumed to know of its prior enactments and, although repeal of an earlier statute or law by implication is disfavored, the courts will recognize such a repeal only when statutes cannot be construed harmoniously and a conflict between the acts is inescapable. *State v. Hicks*, 55 S.W.3d 515, 523 (Tenn. 2001); *Knox County Education Association v. Knox County*

Board of Education, 60 S.W.3d 65, 74 (Tenn. Ct. App. 2001). Prior special statutes may be repealed by implication through the enactment of a later general law when the legislative intent to effect the repeal is clearly expressed. *Trotter v. City of Maryville*, 235 S.W.2d 13, 191 Tenn. 510 (1950).

We believe the General Assembly made its intent clear in 1996 that the 1955 special legislation was no longer pertinent to the obligations of the new Basin Authority. But this does not mean that a void exists for the maintenance, construction and replacement of bridges over the Reelfoot Running Bayou. As indicated above, TDOT is statutorily responsible for constructing and maintaining those roads and bridges that it has designated as being on the state system of highways or interstate highways. Tenn. Code Ann. §§ 54-1-126 and 54-5-101. Counties are similarly authorized to build, maintain, and repair bridges on all county roads, as classified by county legislative bodies. Tenn. Code Ann. §§ 54-10-102 and 54-10-103.

Your inquiry also referenced a consent decree entered in some federal litigation that may have an impact on the Basin Authority's duties and responsibilities regarding flood control and drainage improvements in the Obion River basin, part of which includes the Reelfoot Running Bayou. Our review of the 1985 consent decree entered in *National Ecological Foundation v. National Wildlife Federation, et al.*, United States District Court, Western District of Tennessee, No. 78-2548, indicates that the Basin Authority is to perform all future work in the Obion-Forked Deer River Basin for each reach of the streams in that basin, subject to the review of a state task force appointed by the governor. This task force is comprised of the Commissioners of Agriculture and Environment and Conservation, the Executive Director of the Tennessee Wildlife Resources Agency and the Executive Director of the Basin Authority. The consent decree expressly reflects that one of the governing objectives of the Basin Authority is to facilitate drainage and reduce flood damage to existing farm land and urban areas.

In conclusion, it is the opinion of this Office that the West Tennessee River Basin Authority is the entity responsible for maintaining and coordinating drainage work and flood control in the Reelfoot Running Bayou, subject to the review of the task force. Any necessary bridge work effecting the bayou that the Basin Authority might propose would have to be performed by either TDOT or the relevant county in which the bridge is located.

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