

STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL

October 12, 2022

Opinion No. 22-11

Scope of Authority of Local Governments to Name State Highways

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**Question 1**

Does a local government have the sole authority to name a state highway or bridge?

**Opinion 1**

No. Local governments do not have the *sole* authority to name state highways and bridges. The General Assembly's power to name state highways and bridges supersedes the authority of local governments to name state highways and bridges.

**Question 2**

When the General Assembly passes legislation that designates a segment of a state highway as a memorial highway in honor of a specified individual and directs the Tennessee Department of Transportation to erect signs designating that segment as a memorial highway, does a local government in which that segment of the state highway is situated have authority to override the state legislation by passing local legislation directing the removal of the signage from the right-of-way adjacent to the state highway?

**Opinion 2**

No.

**Question 3**

If the answer to Question 2 is "no," may the State and/or the sponsoring entity or individuals that funded the signage enforce the state legislation?

**Opinion 3**

The ability of the State and/or the sponsoring entity or individuals that funded the signage to enforce the state legislation would depend on the particular facts and circumstances involved in any given situation.

## ANALYSIS

The General Assembly has “full authority over the highways of the State.” *Marshall v. State*, 180 Tenn. 9, 13, 171 S.W.2d 269, 270 (1943); *Johnson Freight Lines v. Davis*, 174 Tenn. 51, 56, 123 S.W.2d 820, 821 (1939). It has the power to “lay out the[] routes and regulate the[] use” of the highways of the State and it may delegate that power to subordinate state agencies, *id.*, and to local governments by proper legislative authority, *BellSouth Telecomms., Inc. v. City of Memphis*, 160 S.W.3d 901, 912 (Tenn. Ct. App. 2004) (citations omitted).

Consistent with this authority, the General Assembly has vested the Tennessee Department of Transportation with the responsibility of designating a “system of state highways” and determining which roads are to be constructed, repaired, and maintained with state highway funds. Tenn. Code Ann. § 54-5-101. Highways on the state system are commonly referred to as ‘state routes’ or ‘state highways’ and have numerical designations assigned to them.<sup>1</sup>

1. Local governments, though, have authority to *name* state highways. See Tenn. Att’y Gen. Op. 06-054 (Mar. 28, 2006). In 1994, the General Assembly “delegated the authority to name public and private roads and streets to the legislative bodies of counties for unincorporated areas and to municipalities within their incorporated boundaries *unless expressly provided otherwise by law.*” *Id.* (citing Tenn. Code Ann. § 7-86-127) (emphasis original).<sup>2</sup>

One such law “expressly provid[ing] otherwise,” as Opinion 06-054 notes, is Tenn. Code Ann. § 3-2-112, which allows the General Assembly to “take formal action to give a name to or rename any road, highway, interstate highway, bridge, overpass or other public structure, facility or property” provided that the General Assembly takes such action through enactment of legislation or adoption of a joint resolution.

Accordingly, local governments do not have *sole* authority to name state highways. The General Assembly, in conformance with Tenn. Code Ann. § 3-2-112, has the power to name state highways and when the General Assembly chooses to exercise this power, its action is controlling.<sup>3</sup> *Id.*

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<sup>1</sup> See [https://www.tn.gov/content/dam/tn/tdot/maps/state-maps/2022\\_Tourism\\_Map.pdf](https://www.tn.gov/content/dam/tn/tdot/maps/state-maps/2022_Tourism_Map.pdf) (last visited 9/2/2022).

<sup>2</sup> Tenn. Code Ann. § 7-86-127(a) provides:

*Unless expressly provided otherwise by law, the authority to name public and private roads and streets, including roads and streets located within residential developments, and to assign property numbers relating to the roads and streets, is exclusively vested in the legislative bodies of counties for unincorporated areas, and municipalities within their incorporated boundaries; provided, that the exercise of this authority must be in a manner acceptable to the United States postal service.*

<sup>3</sup> To the extent that a local government may have authority to name a bridge that exists on a state highway, any such authority would be overridden by the General Assembly’s retained power under Tenn. Code Ann. § 3-2-112 to name bridges. See 64 C.J.S. Mun. Corps. § 1796 (Aug. 2022) (“When municipal power to control and regulate streets exists by virtue of legislative delegation, it is subject to the paramount authority of the state. The legislature retains ultimate control over streets and highways and may, through the enactment of general laws, restrict a municipality’s authority in this regard.”).

2. Moreover, local governments may not override state legislation that designates a segment of a state highway as a memorial highway in honor of a specified individual.

Because legislation passed by the General Assembly naming a specified stretch of a state route in memory of a local citizen is different from legislation that names or renames an entire highway, whether a local government may override this type of “honorary” naming by the State warrants a different analysis, but the outcome is the same. This kind of state legislation, which directs the department of transportation to erect signage or markers to identify the named portion of the highway, is for honorary purposes only and does not name or rename the highway or necessitate any change in addresses. Such legislation does not displace local governments’ authority to “name” roads under Tenn. Code Ann. § 7-86-127, and therefore Tenn. Code Ann. § 3-2-112 does not apply if the legislation does not give a name to or rename the highway, but merely bestows a name for honorary purposes only and does not require the alteration of any address, or of the governmental system for assigning addresses in any local governmental entity.

As previously explained, the control of streets and highways in Tennessee primarily rests with the General Assembly. *Marshall*, 180 Tenn. at 13, 171 S.W.2d at 270; *BellSouth Telecomms.*, 160 S.W.3d at 912. While that control may be delegated to local governments by proper legislative authority, the General Assembly retains the power to restrict a local government’s delegated authority through the enactment of general laws. See *Metropolitan Gov’t of Nashville and Davidson Cnty. v. BellSouth Telecomms., Inc.*, 502 F.Supp.2d 747, 752-53 (M.D. Tenn. 2007) (observing that Tenn. Code Ann. §§ 65-21-101, *et seq.* confers upon telephone companies a state-wide right to construct, operate, and maintain lines necessary for speedy transmission of intelligence, along and over the public streets of cities and towns of this State); 64 C.J.S. Mun. Corps. § 1796 (Aug. 2022). Therefore, the General Assembly “has the power to enact laws that authorize the use of city streets and rights-of-way ‘without permission from the city.’” *Metropolitan Gov’t*, 502 F.Supp.2d at 752, quoting *Lewis v. Nashville Gas & Heating Co.*, 162 Tenn. 268, 276, 40 S.W.2d 409, 411 (1931)).

Accordingly, when the General Assembly passes legislation that designates a segment of a state highway as a memorial highway in honor of a specified individual and directs the Tennessee Department of Transportation to erect signs designating that segment as a memorial highway, a local government in which the segment of the state highway is situated does not have authority to override the state legislation by passing local legislation directing the removal of the signage from the right-of-way adjacent to the state highway. See *id.*<sup>4</sup> Such local legislation would contravene

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<sup>4</sup> The kind of state legislation that names a specific segment of a state highway in honor of someone is arguably not a “general law,” as was the case in the references cited above, but rather one that is “local in form or effect” since such legislation typically designates a segment of a state highway as a memorial highway in a single county or city. But article XI, section 9 of the Tennessee Constitution, which requires local approval before legislation that is “local in form or effect” can become law, does not appear to be implicated because it is well established that this constitutional provision has no application when the subject of the legislation is a *state matter*. See *City of Knoxville ex rel. Roach v. Dossett*, 672 S.W.2d 193, 195-96 (Tenn. 1984); *Roach v. Jones v. Haynes*, 221 Tenn. 50, 52-54, 424 S.W.2d 197, 198 (1968); *State ex rel. Cheek v. Rollings*, 202 Tenn. 608, 618-19, 308 S.W.2d 393, 397-98 (1957). And this is a state matter because the State, through the Department of Transportation, has exclusive power to designate a system of state highways, see Tenn. Code Ann. § 54-5-101, and has a duty to maintain such roads, see Tenn. Code Ann. § 54-1-126(a). Further, the selection of municipal streets for state highways is within the “sole jurisdiction” of the Department of Transportation, see *id.* §§ 54-5-201, 205; and the department must maintain municipal streets over which traffic on state highways is routed, enter into a contract with a municipality for such maintenance, or allow the



state law; local governmental enactments are constrained by state law and must harmonize and be consistent with it. *See* 10A McQuillin Mun. Corps. § 30:42 (3d ed. 2022) (“Municipal control and regulation of streets must harmonize with the laws and policy of the state. This is so because all public highways are under the paramount control of the state, and municipal powers concerning them are mere delegations of state authority. No municipality has power to make any law affecting public highways or their use which contravenes the policy of the state touching such control or use.”).

3. The State and/or the sponsoring entity or individuals that funded the signage for a memorial stretch of state highway could potentially enforce the state legislation depending on the particular facts and circumstances in any given situation. Suit might be brought for injunctive relief to prevent removal of the signage or to restore signage that has been removed. A suit for property damage may be another potential enforcement mechanism. Tennessee Code Annotated § 54-1-134(a) provides for a civil action in the name of the State when any state highway structure<sup>5</sup> is damaged knowingly or negligently and also makes it a criminal offense “for any person who is not authorized to construct or repair a state highway structure to knowingly . . . remove any state highway structure.”

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municipality to perform such maintenance on state highways and be reimbursed by the State, *see id.* §§ 54-5-201 to -204. While municipalities retain police power over municipal streets over which traffic on state highways is routed, *see Collier v. Baker*, 160 Tenn. 571, 574-75, 27 S.W.2d 1085, 1086 (1930) (finding that a municipality retained the right to control traffic on such streets), the State has retained plenary authority over the system of state highways itself, as well as the selection and maintenance of those roads over which traffic on state highways is routed. Because the state legislation at issue seeks to bestow an honorary appellation to a *state* highway, it does not seem subject to review under article XI, section 9.

<sup>5</sup> A “state highway structure” includes a “sign or marker of any nature whatsoever erected upon or maintained within or adjacent to a state highway or the state highway right-of-way by any authorized source or under the authority of the department.” Tenn. Code Ann. § 54-1-134(a)(1).

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