



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-1384

**HIGHWAYS:
Responsibility For Maintenance
of Rejected Subdivision Streets**

Honorable Charles V. Romani, Jr.
State's Attorney
Bond County
Greenville, Illinois 62246

Dear Mr. Romani:

I have your letter wherein you inquire whether a county is responsible for the maintenance of dedicated subdivision streets when the township highway commissioner has refused, because of the failure of such streets to conform with pertinent county regulations, to accept the streets for incorporation into the township road system. For the reasons hereinafter stated, it is my opinion that the county is not responsible for the maintenance of the streets in question.

Section 6-325 of the Illinois Highway Code (Ill. Rev. Stat. 1977, ch. 121, par. 6-325), which provides

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statutory procedures for the incorporation of dedicated subdivision streets into township or district road systems provides in pertinent part as follows:

"In counties having less than 500,000 inhabitants, roads or streets in platted subdivisions and dedicated to public use shall be included in and incorporated into the township or district road system without any hearing or petition therefor required by the preceding Sections of this Division, when and if such roads or streets conform to the rules, specifications and regulations regarding location, width, grades, surface and drainage structures established by the county board. The highway commissioner shall determine when such dedicated roads and streets so conform and shall thereupon make an order to incorporate them into the township or district road system and file one copy of such order in the office of the district clerk and one copy with the county superintendent of highways. If the highway commissioner refuses or fails to make such an order, any 3 interested persons may appeal to the county superintendent of highways to determine if such roads and streets so conform, and if his finding is favorable, he shall make an order to incorporate them into the township or district road system and shall file such order in the office of the district clerk.

* * *

Section 6-325 makes no provision for the maintenance of roads or streets which a highway commissioner has refused to incorporate, and no statutory provision makes a county responsible for the maintenance of roads not incorporated into township or district road systems.

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In the present situation the subdivision plat dedicated streets within a subdivision located in an unincorporated area. Section 6-325 provides that such streets shall be incorporated into the township or district road system without hearing or petition when and if they "conform to the rules, specifications and regulations regarding location, width, grades, surface and drainage structures established by the county board". The township or district highway commissioner is to determine whether the roads or streets conform and, if he finds that they do, order their incorporation into the road system. The mandatory language providing that such roads "shall be included in and incorporated into the township or district road system" is evidence of an intent that if such roads are not included in the township road system, no other public entity shall be responsible for them.

The highway commissioner having made the determination that the streets in question do not comply, and there having been no appeal of his determination taken to the county superintendent of highways, the only recourse for the developer or abutting owners is to bring the streets

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into compliance with the pertinent rules, specifications and regulations. If such streets are not made to conform, they cannot be incorporated into the township highway system and the responsibility for their maintenance remains in the private sector.

Very truly yours,

A T T O R N E Y G E N E R A L