

HIGHWAYS, BRIDGES AND FERRIES: COMMONWEALTH TRANSPORTATION BOARD AND HIGHWAYS GENERALLY - SECONDARY SYSTEM OF STATE HIGHWAYS.

COUNTIES, CITIES AND TOWNS: PLANNING, SUBDIVISION OF LAND AND ZONING.

COMMISSIONS, BOARDS AND INSTITUTIONS: ADMINISTRATIVE PROCESS ACT.

Department of Transportation has exclusive jurisdiction to determine whether it will refuse to accept into secondary system of state highways additional streets in existing subdivision unless second entrance is constructed to meet Department standards.

The Honorable R. Edward Houck

Member, Senate of Virginia

December 17, 1998

You inquire regarding the authority of the Department of Transportation ("Department") to refuse to accept into the secondary system of state highways¹ additional streets in an existing subdivision unless a second entrance is constructed in order to meet Department standards.

You relate that an initial subdivision plat depicting three entrances to a subdivision in the county was submitted to the Department for approval pursuant to § 15.2-2260 of the *Code of Virginia*. One entrance was eliminated when the county approved the subdivision plan. The Department subsequently approved the plat based on traffic flow through the remaining two entrances in the subdivision. After construction of the first section, the county requested permission from the Department to eliminate one of the two remaining subdivision entrances. The Department declined this request based on the volume of traffic and other safety considerations. The Department communicated to the county that, unless the subdivision retained the two entrances, it would not accept any additional streets into the state secondary system. You imply that additional streets constructed within the existing subdivision will not meet Department standards without access through a second entrance. For the purposes of this opinion, I shall assume that your inquiry concerns the authority of the Department to refuse to accept into the secondary system additional streets unless access to the subdivision remains via two entrances.

Section 33.1-69 vests "[t]he control, supervision, management and jurisdiction over the secondary system of state highways ... in the Department."² The Department has adopted regulations³ in accordance with the Administrative Process Act⁴ establishing the requirements and administrative procedures for adding "subdivision streets designated to become part of the secondary system of state highways."⁵ The regulations provide an administrative procedure by which subdivision plans are submitted to, reviewed, approved and accepted by, a resident engineer.⁶ "Any subsequent revision, additions, or deletions thereto shall require specific written approval of the resident engineer for each such change."⁷ The resident engineer is the Department official charged with the responsibility for making such determinations and ultimately accepting such streets into the secondary system of state highways.⁸

A prior opinion of the Attorney General concludes that, in rendering official opinions pursuant to § 2.1-118, the Attorney General has declined to render such opinions when the request (1) does not involve a question of law, (2) requires the interpretation of a matter reserved to another entity, (3) involves a matter currently in litigation, and (4) involves a matter of purely local concern or procedure.⁹ Prior opinions also conclude that a request for an official opinion made pursuant to

§ 2.1-118 concerning the propriety of the actions of another entity interpreting matters reserved solely to it is not subject to review by the Attorney General and must be treated as the binding determination with regard to the matter.¹⁰

Based on the above, the Department has exclusive jurisdiction over all roads in the secondary system of state highways. As a result, the Department has adopted regulations establishing subdivision street requirements and setting forth the administrative procedures for review and approval of additional subdivision streets into the secondary system. Finally, the Department's resident engineer makes the final decision whether subdivision streets will be accepted into the secondary system. I note that the applicable regulations provide an appeal procedure to the district administrator¹¹ when there are "unresolved differences of opinion between the developer and the resident engineer."¹² Consequently, I must respectfully decline to interpret the matter raised by your question, as the Department is the appropriate agency to make such determinations.

¹"The secondary system of state highways shall consist of all of the public roads ... in the several counties of the Commonwealth not included in the State Highway System [and] in incorporated towns having 3,500 inhabitants or less ... as constitute connecting links between" county roads in the secondary system and between secondary and primary system roads, "not, however, to exceed two miles in any one town." Section 33.1-67.

²Prior opinions of the Attorney General also note that § 33.1-69 vests control, supervision, management and jurisdiction over county roads (except those counties electing to withdraw entirely from the secondary system (see 1932 Va. Acts ch. 415, § 11, at 872, 877-80)) in the Department of Commonwealth Transportation Board and the Commonwealth Transportation Commissioner. See 1972-1973 Op. Va. Att'y Gen. 119, 120; see also Op. Va. Att'y Gen.: 1995 at 203, 203-04; 1978-1979 at 132, 135 n.1; 1976-1977 at 102, 102; 1974-1975 at 200, 201; *id.* at 205, 205; 1973-1974 at 174, 175; *id.* at 175, 176.

³Tit. 24, ch. 90, VAC 30-90-10 to 30-90-380 (West Supp. 1998).

⁴Sections 9-6.14:1 to 9-6.14:25.

⁵24 VAC 30-90-20.

⁶24 VAC 30-90-60. "*Resident engineer*" means the employee of the department assigned to supervise departmental operations within a specified geographical portion of the Commonwealth, consisting of one to four counties." 24 VAC 30-90-10.

⁷24 VAC 30-90-60(D)(1).

⁸24 VAC 30-90-60.

⁹Op. Va. Att'y Gen.: 1997 at 10, 12; 1987-1988 at 69, 72, and opinions cited therein.

¹⁰Op. Va. Att'y Gen.: 1997, *supra*, at 12; *id.* at 133, 134; 1987-1988 at 140, 141; *id.* at 352, 352.

¹¹"*District administrator*" means the employee of the department assigned the overall supervision of the departmental operations in each of the Commonwealth's nine construction districts." 24 VAC 30-90-10.

¹²24 VAC 30-90-100.