You ask several questions regarding an apparent abandonment of State Route 655, a secondary road in Pulaski County.

You relate that Old Route 655, located in Pulaski County, enters the Powhatan Boy Scout reservation. In 1944, the board of supervisors of Pulaski County passed a resolution requesting that the Virginia Department of Transportation abandon a 1.30 mile section of Route 655 existing in the secondary system of Pulaski County, because the road served no purpose and was practically impassable.

You advise that between 1944 and 1998, Pulaski officials and residents believed the road had been abandoned. The road has not been maintained, and much of the original roadbed has become covered with vegetation and is impassable to vehicular traffic. You indicate that in 1998, people began expressing uncertainty whether the road, in fact, was abandoned by the Department of Transportation.

You first ask whether the Department of Transportation’s failure to maintain Route 655 since 1944 establishes that the secondary road has, in fact, been abandoned rather than discontinued by the Department.

In 1928, Virginia’s roads were divided into the state highway system and county roads. In 1932, the General Assembly established the secondary system of highways. In 1940, the General Assembly amended and reenacted § 8 of the 1932 Act, prescribing that “[t]he jurisdiction and procedure for abandonment of roads in the secondary system of State highways, shall remain in the local road authorities as now provided by law.” As early as 1926, statutory authority to abandon Route 655 rested with the board of supervisors of the locality rather than with the Department of Transportation:

In case of the abandonment of any section of road … under the provisions of this act as a part of the State highway system, such section of road … shall remain a public road … as the case may be, unless abandoned or discontinued.
as such under the provisions of this act …, and subject to the authority of the board of supervisors or other local road authorities, as provided by law.[4]

Several rules of statutory construction apply to your request. “[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction.”[5] Statutes should not be construed to frustrate their purpose.[6] In addition, the use of the word “shall” in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.[7] Finally, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.[8]

Applying the above rules of statutory construction and the statutory provisions codify applicable in 1944, the Pulaski County board of supervisors had authority to abandon Route 655; however, the board actually only requested that the Department of Transportation abandon the road. The failure of the Department to maintain Route 655 does not impact upon abandonment of the road; rather, such action indicates only that its use was discontinued.[9] Therefore, I am of the opinion that Route 655 has not been abandoned.

You next ask whether, if the road was discontinued rather than abandoned, the Boy Scouts of America, Blue Ridge Council, which has maintained Route 655, is entitled to reimbursement from the Commonwealth for any maintenance performed on the road by the Council.

A 1986 opinion of the Attorney General concludes that discontinuance of a road under § 33.1-150 of the Code of Virginia simply removes the road from the state system of secondary roads “and constitutes a determination that the road no longer warrants maintenance at public expense.”[10] Furthermore, in 1967, the Supreme Court of Virginia decided that

the discontinuance of a secondary road means merely that it is removed from the state secondary road system. Discontinuance of a road is a determination only that it no longer serves public convenience warranting its maintenance at public expense. The effect of discontinuance upon a road is not to eliminate it as a public road or to render it unavailable for public use.[11]

A determination by the Department of Transportation that a road is discontinued divests the Department with control of the road. In addition, discontinuance of the road constitutes a determination by the Department that the road does not merit any further maintenance at public expense. Therefore, any maintenance performed on the road by the Blue Ridge Council was voluntary. Consequently, I must conclude that the Blue Ridge Council is not entitled to reimbursement for any maintenance it performed voluntarily on the road for the benefit of those using the Powhatan Boy Scout reservation.
Your last inquiry is whether the Department of Transportation, should it reclaim ownership of Route 655, must use the original roadbed or may the Department condemn that portion of the road which no longer follows the original roadbed.

Section 33.1-69 vests "[t]he control, supervision, management and jurisdiction over the secondary system of state highways ... in the Department of Transportation." The Department has adopted regulations in accordance with the Administrative Process Act. The resident engineer is the Department official charged with the responsibility for making determinations and ultimately accepting streets into the secondary system of state highways.

The Attorney General has declined to render official opinions pursuant to § 2.1-118 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. Also 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.

Based on the above, the Department of Transportation has exclusive jurisdiction over all roads in the secondary system of state highways. As a result, the Department has adopted regulations establishing requirements and setting forth the administrative procedures for reviewing and approving the addition of 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. Consequently, I must respectfully decline to interpret the matter raised by your final question, as the Department of Transportation is the appropriate agency to make such determinations.

1 See 1928 Va. Acts ch. 159, at 568.
4 1926 Va. Acts ch. 212, § 2, at 394, 396-97. This language was in place at the time of the adoption of the 1944 resolution. See Va. Code Ann. § 1975oo (1942); see also § 1975t.


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