

Abandonment of roads

Number: INFORMAL

Date: April 19, 2004

Mr. Marlin M. Feagle
Columbia County Attorney
Post Office Box 1653
Lake City, Florida 32056-1653

RE: COUNTIES–OFFICIAL RECORDS–REAL PROPERTY–ROADS–ABANDONMENT OF
ROADS–PUBLICATION–DEEDS–requirement for recording certain records upon county's
abandonment of road. s. 336.10, Fla. Stat.

Dear Mr. Feagle:

On behalf of the Board of County Commissioners of Columbia County you have requested assistance in determining whether the failure to record in the deed records of the county, a resolution adopted by the Board of County Commissioners vacating and abandoning a public roadway affects the validity of that road closure. That is, as a result of failing to record a resolution closing a public roadway in the deed records of the county, does the roadway remain public until or unless a proper road closing procedure has been completed?

According to your letter, on June 19, 1975, the Board of County Commissioners of Columbia County, Florida, in accordance with section 336.10, Florida Statutes, adopted a resolution vacating and closing a roadway in Columbia County known as Layfield Road. The board complied with all the statutorily prescribed procedures with the exception of recording the resolution in the deed records of the county. You question whether this failure to record nullifies the action of the commission vacating and closing the roadway.

Section 336.10, Florida Statutes, sets forth the procedure for closing and abandonment of roads. Pursuant to the statute:

"Before any such road shall be closed and vacated, or before any right or interest of the county or public in any land delineated on any recorded map or plat as a road shall be renounced and disclaimed, the commissioners shall hold a public hearing, and shall publish notice thereof, one time, in a newspaper of general circulation in such county at least 2 weeks prior to the date stated therein for such hearing. After such public hearing, any action of the commissioners, as herein authorized, shall be evidenced by a resolution duly adopted and entered upon the minutes of the commissioners. The request of any agency of the state, or of the United States, or of any person, to the commissioners to take such action shall be in writing and shall be spread upon the minutes of the commissioners; provided, however, that the commissioners of their own motion and discretion, may take action for the purposes hereof. Notice of the adoption of such a resolution by the commissioners shall be published one time, within 30 days following its adoption, in one issue of a newspaper of general circulation published in the county. *The proof of publication of notice of public hearing, the resolution as adopted, and the proof of publication of*

the notice of the adoption of such resolution shall be recorded in the deed records of the county."
(e.s.)

It was this final step in the process described by section 336.10, Florida Statutes, the recording of Columbia County Resolution 75R-114 in the deed records of the county, that was omitted.

A number of Florida cases consider the requirements for the vacation or abandonment of public roadways. In *Bouldin v. Okaloosa County*,^[1] landowners sued the county after the county commission passed a resolution to close part of a highway. Following the requirements of section 336.10, Florida Statutes, the county commissioners had published notice 3 times of their intention to vacate portions of a highway. The court determined that "[a]ll three notices were substantively deficient, because neither the first notice nor the other two notices sufficiently informed the public of the true nature of the action the Board intended to take at the public hearing."^[2] The notices had variously described the commission's proposed action and had set forth legal descriptions of the property that differed in each notice.

The court recognized that "[t]he obvious intent and purpose of these statutory provisions is to require the board of county commissioners to provide ample notice of a public hearing at which the road closing will be considered, and to afford all interested citizens a reasonable opportunity to participate and be heard."^[3] Failure of the county to meet these requirements constituted a failure to afford procedural due process. The court remanded the case for further consideration of the evidence by the trial court.

In *Boys Work Incorporated v. Gale*,^[4] the court considered the terms of a 1941 statute for vacation of public roads. Section 343.04, Florida Statutes 1941, provided that:

"No public road can be established, changed or discontinued except on application to the county commissioners. Such application shall be made by petition duly signed by citizens, freeholders living in the vicinity of the road sought to be established or changed."

The court determined that Boys Work deeded real property to the county subject to the restriction that it would be used for public road purposes. Some 23 years later the county reconveyed the lot back to Boys Work. The minutes of the county commission did not reflect authority to execute and deliver the deed but a motion was passed authorizing the chairman and clerk to execute and deliver the deed. The county instructed the clerk to request Boys Work to reconvey the lot because the county commission had not understood the requirement that the land be used for public road purposes. In response to the clerk's request, Boys Work advised that it would not reconvey the entire lot to the county but would deed a 30-foot right of way for use as a public road. It was noted that the road had been closed for many years and sand dunes had covered it. After the county received the letter the minutes of the county commission were silent on the matter and no action was taken until 1971 when litigation ensued in which the county sought cancellation of its deed to Boys Work. The First District Court of Appeal determined that the procedure prescribed by section 343.04, Florida Statutes 1941, had not been followed resulting in the county commission's lack of jurisdiction to execute and deliver the deed to Boys Work in 1946:

"This statute prescribes the rule for discontinuing a public road. It excludes any other method

than by the procedure outlined therein. If the statutory procedure is not followed, the county commission lacks jurisdiction to proceed." [5]

Thus, the county's deed transferring the property was void and title remained in the county.

In *Seaside Properties, Inc. v. State Road Department*, [6] the court was asked to determine whether a piece of property was owned by Seaside through adverse possession or deed or owned by the State Road Department. The question involved a section of state road located in Monroe County. Pursuant to section 334.12, Florida Statutes 1966, the state was authorized to convey property no longer needed for road purposes by conveyances signed by the Chairman of the State Road Board of Florida and attested to by the Secretary. The statute also provided that no action taken by the State Road Department was binding unless the same was taken in an open meeting and was reflected by the minutes. In the *Seaside* case there was no showing that the road department had taken any action to abandon the road. As the court noted, "[a] highway cannot be permanently closed or discontinued by the public authorities without compliance with the procedure prescribed by statute" [7] The court held that the title to the property was held by the State Road Department and there was insufficient proof that the department had abandoned it.

While it is clear from these cases that Florida Courts require strict adherence to the statutory requirements for abandoning public roadways, it is my opinion that these cases are distinguishable from a situation where the only failure to follow statutory requirements was in the final recording of the resolution abandoning the road in the deed records of the county. There is no question that the county commission followed the statutory directives in section 336.10, Florida Statute, with regard to holding a public hearing, publishing notice and adopting a resolution which was entered upon the minutes of the commission. Further, the county published notice of its adoption of the resolution in a newspaper of general circulation published in the county as required by the statute. Based on its substantial compliance with the statutory requirements it is my opinion that the county commission had the authority to and did vacate and abandon Layfield Road in Columbia County.

Recording statutes act generally to protect the rights of those claiming an interest in land, including bona fide purchasers of property and creditors of property owners. The purpose of these statutes is to protect the persons within their terms from secret prior conveyances. [8] As is recognized in general legal treatises on the subject:

"Recording statutes are generally construed by the courts so as to afford the greatest protection to those who in good faith endeavor to comply with them. Thus, clerical errors and technical omissions in recording will be disregarded by a court, and substantial compliance with the recording law is ordinarily sufficient." [9]

Thus, while subsequent purchasers of this property may not have had notice that Layfield Road had been abandoned by the county, this would appear to be the only consequence of the failure by the county commission to record its resolution in the deed records of the county. It does not appear that this omission resulted in the retention of the road in the county despite the county commission's substantial compliance with the other statutory requirements for vacation or abandonment. [10]

The county commission's failure pursuant to section 336.10, Florida Statutes, to record in the deed records of the county a resolution adopted by the board of county commissioners vacating and abandoning a public roadway would not appear to invalidate the road closure. The Board of County Commissioners of Columbia County, Florida, should however, record the resolution in the deed records of the county in order to ensure that the rights of those claiming an interest in this land are protected.

This informal advisory opinion was prepared for you by the Department of Legal Affairs in an effort to be of assistance to you. The conclusions expressed herein are those of the writer and do not constitute a formal opinion of the Attorney General.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] 580 So. 2d 205 (Fla. 1st DCA 1991).

[2] *Id.* at p. 208-209.

[3] *Supra* n. 1 at p.209.

[4] 321 So. 2d 435 (Fla. 1st DCA 1975), *cert. den.* 336 So. 2d 104 (Fla. 1976).

[5] *Id.* at p. 437, citing *Baskin v. State*, 155 So. 655 (1934).

[6] 190 So. 2d 391 (Fla. 3d DCA 1966).

[7] *Id.* at p. 393.

[8] *See generally* 44 Fla. Jur. 2d *Records and Recording Acts* s. 156.

[9] *Id.* *And see* *Jackson v. Haisley*, 17 So. 631 (Fla. 1895) and *Sullivan v. Woodward*, 582 So. 2d 31 (Fla. 1st DCA 1991).

[10] *Cf.* 66 Am. Jur. 2d *Records and Recording Laws* s. 40 (the underlying philosophy of registration statutes is that, if one of two persons must suffer a loss, the person whose negligent conduct made it possible for the loss to occur must bear the loss).