

PUBLICATION

Formal Dedications of Roadbeds: Is The "Formality" Itself Enough to Convey Full Ownership?

November 19, 2012

Under Louisiana law, the owner of private property may transfer an interest in the property to the public, including parishes and other political subdivisions. In connection with roads, property owners typically accomplish this using something known as a dedication. Unfortunately, the state legislature has not provided a great deal of guidance on how dedications are made or the legal effect of certain language grantors have used to make such dedications. As such, the courts have had to tackle the subject on a case-by-case basis.

The Louisiana jurisprudence recognizes several manners of dedication. One of those is known as a "formal" dedication, in which the owner signs a written document making the dedication. Characterizing the **mode** of a dedication, however, does not resolve the issue of the **nature** of the interest granted; for example, full ownership versus mere use of the property. While Louisiana law clearly allows a political subdivision to become the outright *owner* of property by dedication, whether that has happened in a particular case depends on the circumstances involved in that case. The Second Circuit Court of Appeal for the State of Louisiana recently addressed the issue in connection with roadbeds that straddle lucrative mineral interests in the Haynesville Shale. In the cases of *John Creighton Webb, Jr., et al v. Franks Investment Co., et al* and *Eric W. Allen, et al v. Chesapeake Louisiana, LP*, determining whether certain century-old formal dedications of roadbeds in Caddo Parish conveyed ownership or simply a right of use would determine who, in present times, had hit the Haynesville jackpot.

The instruments involved in the *Webb/Allen* cases were standard preprinted forms commonly used by Caddo Parish in the early 1900s. The *Webb/Allen* dedications, made in 1913, 1914, 1924 and 1928, each contained simple language to the effect that the owner dedicated certain property to **"to the public use, for a public road."** The *Webb/Allen* court was asked to determine the **nature** of the interest granted by these formal dedications: Did the dedications convey **ownership** of the roadbed or merely a **servitude**? The answer would resolve the ultimate issue of whether use of a mineral servitude on one side of the road preserved use on the other side. Relying on language contained in a 1996 decision by the Louisiana Supreme Court, *St. Charles Parish School Board v. P & L Inv. Corp.*, Caddo Parish and its successors-in-interest argued that because the grantors used *formal* dedications, the dedications *as a matter of law* conveyed ownership of the road **unless** ownership was expressly or impliedly retained. In the *St. Charles* decision, the Louisiana Supreme Court noted that "[a] formal dedication transfers ownership of the property to the public unless it is expressly or impliedly retained." *Id.*

The Second Circuit Court of Appeal, in an opinion authored by Chief Judge Brown, rejected the Parish's argument. The Court quickly dismissed the language contained in the *St. Charles* case as irrelevant to the analysis in this case, because the dedication of roadbed at issue in *St. Charles* was a *tacit*, not *formal*, dedication. Turning to the facts of the *Webb/Allen* cases, the court first examined the language of the dedications themselves to discern the parties' intent. Finding no clear expression of an intent to convey *ownership*, but only an expression of the intent that the roadbed serve the purpose of public *use*, the Court then looked to certain evidence outside the four corners of the document. In particular, the Court focused on the fact that:

- the Parish did not pay for the rights it obtained;
- after the dedications, the Parish treated the dedications as granting only a right of use, not ownership of the roadbeds; and
- the public's real interest was to *use* the roads, not *own* them outright

In particular, the court considered three parish documents created after the dedications to be dispositive of the parties' intent: (1) a 1930 letter from the Parish Engineer stating that the Parish had no right to exploit the mineral rights; (2) a 1957 resolution recorded by the Police Jury declaring that it made no claim to ownership of the mineral rights by virtue of the dedication; and (3) a 1983 resolution by the Police Jury expressly waiving all present and future claims to fee title and to mineral rights relating to the property described in the instruments. In these circumstances, the Court was unwilling to find a transfer of full ownership as a matter of law based solely on the undisputed fact that the dedication was a "formal" dedication. Whether the Louisiana Supreme Court will be called upon to consider the issue remains to be seen.