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Dedication in Pennsylvania

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NOTES

DEDICATION IN PENNSYLVANIA

Dedication as a method of conveying land is of common law origin¹ but the dispute as to its beginnings is widespread. Tiffany holds that at its inception it appeared to be confined to dedication of land for highway uses, but he acknowledges that the scope of the doctrine has been very greatly extended.² Some Pennsylvania examples of this extension relate to parks,³ wharves and landings,⁴ cemeteries,⁵ and schools.⁶ Digby holds that dedication stems from a mere right to go upon the land for the purpose of doing something essential to the common good, such as pasturage.⁷ The meaning of dedication as stated by Blackstone is the recognition of "customary rights arising out of the necessities of the thing or of the public."⁸

Dedication differs from more formal methods of conveyancing in that it can be effective only to transfer title to the public. It may be express or it may be implied from acts of the grantor, or even implied from acts of the grantee—the public itself. Some jurisdictions distinguish between dedication to the public and what they consider a "private dedication" but the majority holds that there is only a dedication to the public and rejects the differentiation between these two types.⁹

Modern dedication is divisible into two elements. The first is an act manifesting an intent to yield property rights to the public. The second, where required, is acceptance. This is some act by the public or by municipal or other public authorities indicative of the acceptance. The dedication can only be made by the owner of the fee or one authorized by him to convey land; hence, a tenant for a term of years cannot bind his reversioner by a dedication to public use.¹⁰

Methods of Dedication

There are no particular formalities required to constitute an express dedication upon the part of the land owner; any act which clearly indicates an intent to dedicate is sufficient.¹¹ Whatever form or method of proof is used to establish this intent, the evidence must be "clear and convincing."¹² In equity courts it is a ques-

¹ Kirkwood, *CASES ON THE LAW OF CONVEYANCES*; 10 (2nd ed. 1941)

² 4 *TIFFANY ON REAL PROPERTY*, 329 (3rd ed. 1939).

³ *Commonwealth v. Rush et al.* 14 Pa. 186; (1850).

⁴ *City of Pittsburgh v. Epping-Carpenter Company*, 194 Pa. 318; 45 'A. 129 (1900).

⁵ *Pott v. School Directors of Pottsville*, 42 Pa. 132 (1862).

⁶ *Pott v. School Directors of Pottsville*, *supra*.

⁷ Digby, *HISTORY OF THE LAW OF REAL PROPERTY*, 182 (5th ed.)

⁸ 2 *BLACKSTONE COMMENTARIES* * 33, (Lewis's ed. p. 500; 1898):

⁹ *Rose v. Fisher*, — W. Va. —, 42 SE 2d. 249, 172 ALR 160 (1947).

¹⁰ *Schenly v. The Commonwealth for the use of the City of Allegheny*, 36 Pa. 29, 58 (1859).

¹¹ *Waters v. Philadelphia*, 208 Pa. 189; 57 A. 523 (1904).

¹² *Kniss v. Borough of Duquesne*, 255 Pa. 417; 100 A. 132 (1917).

tion for the chancellor,¹⁸ and in law courts a question for the jury.¹⁴ Some examples of this express dedication are: the opening of a street, followed by an invitation to the public to use the same and a later request to the borough to take the street over;¹⁵ a proclamation;¹⁶ a recital of a dedication in the deed under which the donor purchased the property;¹⁷ and where the land owner deeds land to someone in privity of contract with him, expressly declaring an adjacent street dedicated to the public forever.¹⁸

The second method of dedication is implied from actions by the grantor. Probably the form most often met with is sub-division of one's land into lots, and a sale of these lots with reference to a plan or plat of the lots showing the included streets. The result is that a relationship of the purchaser to the land under the streets is created. What that relationship is, has been variously called a contract with the public,¹⁹ and not only the purchasers of lots abutting thereon but all other purchasers in the general plan may assert the character of public street;²⁰ an implied covenant that the streets would remain open;²¹ a contract with the purchaser giving him the rights to use and also the public the right to use.²² Other cases have merely called it dedication of the street to public use.²³

It is not vital that the streets be opened on the land, mere plotting of the map is sufficient.²⁴ It is also enough that some lots on the plat are sold, not necessarily some on that particular street.²⁵ With reference to the grantor in these cases, the courts speak of estoppel²⁶ or state that "his acts are such that his testimony to the effect that he had no intention of dedicating cannot be received to contradict the plain legal effect of the recorded instrument and the subsequent sales with reference to it."²⁷

Recordation of the plan by the grantor is not necessary in order that the public rights may arise.²⁸ It is stated in *City of Pittsburgh v. The Epping-Carpenter Company*²⁹ that the "mere making of a plan, even if recorded, does not constitute a dedication until the rights of third persons have accrued by sale of lots or public use." The sale of the lots according to the plan is the important thing in this situ-

¹⁸ Borough of Mountville v. Gable, 73 Pa. Super. 189, (1919).

¹⁴ Wensell v. North Versailles Township, 136 Pa. Super. 485; 7 A. 2d 590 (1939).

¹⁵ DuBois Cemetery Co. v. Griffin, 165 Pa. 81; 30 A. 840 (1875).

¹⁶ Commonwealth v. Alburger, 1 Wharton 469; (Pa. 1836).

¹⁷ Commonwealth v. First National Bank of Danville, 41 D. and C. 139 (Pa. 1941).

¹⁸ Van Auken v. Freed, 45 D. and C. 597; (Pa. 1942).

¹⁹ Commonwealth v. Rush, 14 Pa. 186 (1850).

²⁰ In Re Opening of Pearl Street, 111 Pa. 565; 5 A. 430 (1886).

²¹ In Re Opening of Brooklyn Street, 118 Pa. 640; 12 A. 664 (1888).

²² Heckerman v. Hummel, 19 Pa. 64 (1852).

²³ McCall v. Davis, 56 Pa. 431, (1865).

²⁴ Ferguson's Appeal, 117 Pa. 426; 11 A. 885 (1888).

²⁵ Trutt v. Spotts, 87 Pa. 339 (1878).

²⁶ Shetter v. Welzel, 242 Pa. 355; 89 A. 455 (1913).

²⁷ Snyder v. Commonwealth, 353 Pa. 504; 46 A. 2d 247 (1946).

²⁸ Transue v. Sell, 105 Pa. 604 (1884).

²⁹ City of Pittsburgh v. The Epping-Carpenter Company, 194 Pa. 318; 45 A. 129 (1900).

ation.⁸⁰ The deed may refer to the plan,⁸¹ or the lots may have been purchased by lot number on the plan, or the lots sold by reference to the plan.⁸²

The third method by which a dedication may arise is public user. The principle is that twenty-one years of adverse user under claim of right is sufficient to give a rebuttable presumption of a grant⁸³ but this must be clearly distinguished from the use by the public jointly with the owner and by his mere sufferance, which latter condition no matter how long continued establishes no right by dedication.⁸⁴ This third method appears to be very similar to prescription.⁸⁵ Tiffany in holding that it is not says:⁸⁶

"The public strictly speaking cannot acquire rights by prescription. Since a grant cannot be made to the public there is no room for the presumption of a grant in such case. (The presumption of a lost grant being an apparent touchstone in prescription.) The analogy of prescription has however been freely applied in the case of highways on the theory that an adverse user of private land by the public for the prescribed period gives rise to a presumption that the land was dedicated for a highway and the term 'prescription' is almost invariably used in that connection."

Incidents of Dedication

The effect of dedication standing alone is to establish in the public a power to create from this dedicated land the desired public necessity or improvement. The general rule is expressed as "upon dedication and acceptance both the grantor and the public are bound by it and the public could not change the purpose as long as anyone objected."⁸⁷ Dedication generally appears to be static, in other words the land can only be accepted and used for what it was offered, but in the case of *Commonwealth v. Connellsville Borough*⁸⁸ land originally dedicated as a boat yard for travellers was changed into a public park and on part of this a town hall was erected.

Land specially dedicated cannot be diverted to public use otherwise than to the use to which it was expressly dedicated.⁸⁹ It has been held however, in the line of cases of which *Connellsville Borough*⁴⁰ is an example, that a dedication of land to public purposes was not such a special dedication and it is not an alteration of the original use to authorize public squares as locations for public buildings.⁴¹ Insofar as streets are concerned, it has been held that a dedication of streets carried with it also a dedication of a storm sewer system,⁴² and that an adjoining lot owner

⁸⁰ *Trutt v. Spotts*, 87 Pa. 339 (1878).

⁸¹ *O'Donnell v. Pittsburgh* 234 Pa. 401; 83 A. 314 (1912).

⁸² *Pittsburgh v. Epping Carpenter Company*, 194 Pa. 318; 45 A. 129 (1900).

⁸³ *County of Susquehanna v. Deans*, 33 Pa. 131 (1859).

⁸⁴ *Griffin's Appeal*, 109 Pa. 150 (1885).

⁸⁵ *Milford Borough v. Burnett*, 288 Pa. 434; 136 A. 669 (1927).

⁸⁶ 4 TIFFANY ON REAL PROPERTY 551 (3rd ed. 1939).

⁸⁷ *Commonwealth v. Rush*, 14 Pa. 186 (1850).

⁸⁸ *Commonwealth v. Connellsville Borough*, 201 Pa. 154; 50 A. 825 (1902).

⁸⁹ *Wentz v. Philadelphia*, 301 Pa. 261; 151 A. 883 (1930).

⁴⁰ *Commonwealth v. Connellsville Borough*, *supra*.

⁴¹ *Mahon v. Luzerne County*, 197 Pa. 1; 46 A. 894 (1900).

⁴² *Cheltenham and Abington Sewerage Company v. Public Service Commission*, 311 Pa. 175; 166 A. 649 (1933).

would not be enjoined from laying a drain pipe in a street dedicated and accepted by the public.⁴³ However, this apparent easing of the restrictions has not gone so far as to include a sale of lots, originally part of a square dedicated to public use, although the municipality intended that the proceeds be used in payment for a water-works.⁴⁴

The act of dedication in itself can bring to the public or municipality no liability for injury from failure, or duty to maintain and repair this dedicated land until, and unless, the public accepts the offer. The public as a whole must accept the offer, because a dedication will be presumed to be intended for the public as a whole and not for part of the public in exclusion of any other part.⁴⁵ As indicated above there can be no liability on the part of the municipality for injuries sustained on property dedicated to public use but not accepted by the public or by their representatives, the municipality.

Acceptance by the public

Acceptance may be express, may be implied from certain acts of municipal dominion over the dedicated land, or it may be implied from acts of the public in its own right.

The first of these, express acceptance, is ordinarily indicated by some formal act of the municipal officers charged with such matters. It may be by ordinance,⁴⁶ or other councilmanic decree⁴⁷ or as stated in *Wensell v. North Versailles Township*:⁴⁸

"by municipal authorities within their powers acting as representatives of the public, and formal powers acting as representatives of the public, and formal acceptance by them of dedicated property opened and available for a specified use is 'accepted' by and on behalf of public, thereby making dedication complete without further public action."

The act of acceptance must be an affirmative act, mere silence not being sufficient to constitute acceptance.⁴⁹

From certain acts of municipal dominion, illustrative of intent to exercise dominion over the dedicated land, acceptance may be inferred. This is the second type of acceptance, and relative to it, *Wensell v. North Versailles Township*⁵⁰ declares:

"In the absence of a formal acceptance the liability of a municipality to keep a dedicated street in a safe condition for public travel may be asserted and established upon two separate and distinct grounds. One is

⁴³ *Ormsby Land Company v. Pittsburgh*, 276 Pa. 68; 119 A. 730 (1923).

⁴⁴ *Commonwealth v. Rush*, 14 Pa. 186 (1850).

⁴⁵ *Penny Pot Landing or Commonwealth ex rel Northern Liberties v. City of Philadelphia*, 16 Pa. 79 (1851).

⁴⁶ *Steel v. Huntingdon Borough*, 191 Pa. 627; 43 A. 398 (1899).

⁴⁷ *Steel v. Huntingdon Borough*, *supra*.

⁴⁸ *Wensell v. North Versailles Township*, 136 Pa. Sup. 485; 7 A. 2d 690 (1939).

⁴⁹ *Steel v. Huntingdon Borough*, *supra*.

⁵⁰ *Wensell v. North Versailles Township*, *supra*.

long continued public user without any formal act of acceptance and the other is authorized or ratified municipal acts from which an acceptance may be implied."

Some examples of this type of acceptance are: sewer construction in the bed of the dedicated street,⁵¹ authorization of the construction of a street railway upon it,⁵² and the repair and maintenance of the highway.⁵³ In relation to this latter phase of the question, *Steel v. Huntingdon Borough*⁵⁴ states:

"... acceptance may be shown either by ordinance or by repairs to the streets directed to be made by council when assembled. If the repairs to the street at the point in question were by the street commissioner or a street committee, or even by the chief burgess, then there is no evidence of the acceptance unless the council subsequently ratified them. Such subsequent ratification may be shown by the payment of the expense of repairs but the mere payment of money to the one making the repairs is not evidence of ratification unless the council at the time was aware that it was paying for repairs to these streets and knowingly did pay for them."

However, this making of repairs by the street commissioners and the expenditure of money by other public officials pursuant to the dedication and without council authorization has been held to be some evidence on the question of whether or not the public looked upon and accepted the land as public property.⁵⁵

These decisions apparently limit the right of acceptance to acts of the elected deliberative body, and are supported by other decisions permitting other legislative bodies to do the same thing in their provinces.⁵⁶

The third type of acceptance is the one which may arise from actions by the public. The public user effective to demonstrate acceptance of a dedication is the same as that necessary to show a dedication; i.e. the user must be defined, uniform, adverse, and under a claim of right.⁵⁷ The use here must be according to the intention of the offeror, or if there is no such dedication, by a defined use. Mere use by a "loose rambling way of passing over a lot and by different routes at different times creates no right."⁵⁸ The time element, while important in the showing of a dedication, may cause a defined or express dedication to become effective in less time than twenty-one years.⁵⁹ While it has never been said how much less, it has been indicated that circumstances will govern. One example is in the case of *Grant v. Dickson City Borough*,⁶⁰ where a period of fourteen months was not long enough to show acceptance, particularly since the street had been opened primarily for land company operations and the plan had only been recorded for six months.

In the case of *Steel v. Huntingdon Borough*⁶¹ there is the statement that the "use of these (roads) not accepted by the borough, by the owners of lots abutting

⁵¹ *Kniss v. Borough of Duquesne*, 255 Pa. 417; 100 A. 132 (1917).

⁵² *McKee v. Pennsylvania Railroad Company*, 255 Pa. 360; 100 A. 454 (1917).

⁵³ *Steel v. Huntingdon Borough*, 191 Pa. 627; 43 A. 398 (1899).

⁵⁴ *Steel v. Huntingdon Borough*, *supra*.

⁵⁵ *Kniss v. Borough of Duquesne*, 255 Pa. 417; 100 A. 132 (1917).

⁵⁶ *Case of the Philadelphia and Trenton Railroad Company*, 6 Wharton 25 (Pa. 1840)

⁵⁷ *Commonwealth v. Philadelphia Railway Company*, 135 Pa. 256, 19 A. 1051 (1890).

⁵⁸ *Arnold v. Cornman*, 50 Pa. 361 (1865).

⁵⁹ *Washington Borough v. Steiner*, 25 Sup. 392 (1904).

⁶⁰ *Grant v. Dickinson City Borough*, 235 Pa. 536; 84 A. 454 (1912).

⁶¹ *Steel v. Huntingdon Borough*, 191 Pa. 627; 43 A. 398 (1899).

on them or by others delivering coal, flour, and hay for the occupants of the lots, or for any other purpose does not render the borough liable for their proper and reasonable repair." This case at first glance eliminates the possibility of acceptance by public user, by a later case, *Kniss v. Borough of Duquesne*⁶² holds that this *Huntingdon Borough* case must be read in the light of *Ackerman v. City of Williamsport*⁶³ and *Grant v. Dickinson City Borough*,⁶⁴ both of which hold that adverse user for the statutory period is sufficient to establish either a dedication or an acceptance.

Type of Acceptance Required

Dedication is a continuing offer of a piece of land to a municipality for public use.⁶⁵ In some cases, as indicated above, acceptance is a vital part of dedication and in others it is unnecessary to fix a right in the public. It need not be immediate but may be made when public necessity or convenience arises.⁶⁶ Where it is necessary, as in the case of express dedication, and completed, the effect of acceptance is to impose burdens and liabilities on public authorities as regards conditions and repair of the property; to render the offer of dedication irrevocable where in limited cases it is revocable; and to give the municipality rights of control as regards the property, as well as safeguarding the public interests in the free use of the property. In express dedication any one of the three types of acceptance is enough.

In the second type, implied dedication from actions of the grantor, the question of acceptance for this type was discussed in *City of Pittsburgh v. The Epping-Carpenter Company*⁶⁷ as follows:

"The dedication of land for public use by means of plans has been long recognized. It is true that acceptance by the public is necessary to fix the right. By sale of lots and those acts of acceptance the dedication is irrevocable. Such dedication becomes irrevocable when the interest of third persons is acquired by sale of lots or acceptance for the public by public use or municipal action.

The mere making of a plan, even if recorded, does not constitute a dedication until the rights of third persons have accrued by sale of lots or public use; the property remains under the control of the owner and the plan may be modified or abrogated by him at will."

From this it appears that sale of the lots, or acceptance in any of the three methods is necessary. Without one of these four things there can be no right in the public.

In the third type of dedication—implied from public user, the question of acceptance apparently does not arise. If it did, the fact that it is created in exactly the same manner as one possible type of acceptance would make the requirement superfluous.

⁶² *Kniss v. Borough of Duquesne*, 255 Pa. 417; 100 A. 132 (1917).

⁶³ *Ackerman v. City of Williamsport*, 227 Pa. 591; 76 A. 421 (1910).

⁶⁴ *Grant v. Dickinson City Borough*, 235 Pa. 536; 84 A. 454 (1912).

⁶⁵ *Milford Borough v. Bennett*, 288 Pa. 434; 136 A. 669 (1927).

⁶⁶ *City of Pittsburgh v. Epping-Carpenter Company*, 194 Pa. 627; 43 A. 398 (1899).

⁶⁷ *City of Pittsburgh v. Epping-Carpenter Company*, *supra*.

Partial Acceptance

The question of acceptance of only a portion of a dedicated plot of land for any one of a number of purposes leads to some very difficult questions. Apparently the rule in Pennsylvania is that an acceptance of a portion indicating a purpose by the public to accept the gift fixes the public right to the whole of the subject matter.⁶⁸ However the Pennsylvania Supreme Court has stated that "where only a part of the property dedicated by ordinance to certain public purposes was used therefore, there was no acceptance by the public of the dedication of the part not so used."⁶⁹ In this case these other portions were never opened for public use as a park and were used for dumping grounds or were leased to tenants. The court held the acceptance must depend on the intention to ultimately use the whole for public purposes. This depends on the nature of the use made of a part and the condition and location of the other parts."⁷⁰ This case can apparently be distinguished on its facts because the parts which the municipality sold as not dedicated for park purposes were not contiguous to the land accepted and used by the public as a park. In the recent case of *Easton v. Koch*,⁷¹ the Pennsylvania Superior Court has underlined the continuing adherence to the rule of the majority of cases when it flatly stated "any public use of a part of the property indicating a purpose to accept the gift fixes the public right to the whole." The court here was quoting *City of Pittsburgh v. The Epping-Carpenter Company*,⁷² an earlier Supreme Court case.

Applicable Statutes

Inasmuch as the majority of the questions of dedication stem from acquisition of streets and highways, it may be of interest to notice some of the Pennsylvania Statutes which affect this question.

The general authority of the various municipalities to lay out, open, and maintain streets is contained in the act of 1915,⁷³ which has been subject to modification by amendment. In the case of cities of the third class, the act of 1931 establishes in them these rights while repealing the authority relative to these smaller cities in the earlier act.⁷⁴ A parallel situation exists as to boroughs whose authority is now contained in the 1947 Borough Code.⁷⁵

This Borough Code also provides that no one shall open or dedicate any street or any drainage facilities for public use in any borough without first submitting suitable plans to the council for approval or necessary modification. The plans must then be filed with the Borough Engineer and the street shall not be opened except

⁶⁸ *City of Pittsburgh v. Epping-Carpenter Company, supra.*

⁶⁹ *Trustees of the Philadelphia Museum v. Trustees of the University of Pennsylvania*, 251 Pa. 125; 96 A. 126 (1915).

⁷⁰ *Trustees of the Philadelphia Museum v. Trustees of the University of Pennsylvania, supra.*

⁷¹ *Easton v. Koch*, 152 Pa. Sup. 327; 31 A. 2d. 747 (1943).

⁷² *City of Pittsburgh v. Epping Carpenter Company*, 194 Pa. 627; 43 A. 398 (1899).

⁷³ Act of May 28, 1915, P.L. 573, sec. 1; 53 P.S. 552.

⁷⁴ Act of June 23, 1931, P.L. 932, Art. XXIX, sec. 2915; 53 P.S. 12198-2915.

⁷⁵ Act of July 10, 1947, P.L. 1621, 53 P.S. 13531.

in strict compliance with these plans.⁷⁶ Appeal from any decision of the council is by petition to the Court of Quarter Sessions of the County, which court may approve, modify or reverse council's order relative to the plan so filed.⁷⁷

The result of this statute has been held to be that the approval of the City Planning Commission of a plan of lots upon which streets are laid out and intended to be dedicated to public use in an acceptance of the proposed dedication and thereafter all such streets and alleys on the plan were subject to municipal control.⁷⁸

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⁷⁶ Act of 1947 *supra*. sec. 1666; 53 P.S. 13697.

⁷⁷ Act of 1947 *supra*. sec. 1667; 53 P.S. 13698.

⁷⁸ Schwab v. Yerkes, 21 Lehigh Law Journal 147 (1948).