

Complexities in determining title to oil and gas under Pennsylvania roadways

The increased exploration of oil and gas throughout the Commonwealth of Pennsylvania in recent years has highlighted the importance of determining the ownership of oil and gas underlying public roads and highways. More than 120,000 linear miles of state and local roadways traverse the Commonwealth.¹ Public roadways—which include local roads, streets, alleys, expressways, interstates and turnpikes—may be created by conveyance, condemnation, dedication or prescription.

To determine proper ownership of the oil and gas under a roadway, a full title search of surrounding tracts must be completed. The time and method by which the roadway was created often influence the ownership of the oil and gas. This article, though not exhaustive, discusses the primary methods that roads may be created in Pennsylvania and provides a framework for determining oil and gas ownership under a public road.

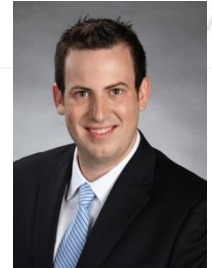
Centerline presumption

Under Pennsylvania law, there is a general presumption that a conveyance of land bounded by a public roadway carries with it the fee to the center of the road as part and parcel of the grant, unless the road is owned in fee by the Commonwealth or municipality or an interest in the roadway has been expressly reserved.² Where the side or edge of a street or highway is called for as a boundary in a deed, the grantee takes title in fee to the center line of such roadway.³ The grantee acquires a fee interest in the land to the centerline of the roadway, subject to the public's right of passage and any reservations, and the grantor divests himself of his interest in the same.⁴ If a public roadway easement is later vacated, the property reverts "automatically and simultaneously" to abutting landowners.⁵

The foregoing highlights the necessity to analyze ownership of surrounding tracts of land to determine ownership of the oil and gas under a roadway. The application of the centerline

presumption depends on the nature of the Commonwealth's or municipality's ownership interest in the roadway and whether such interest is limited to an easement. The following discussion provides a brief analysis of the common methods of roadway creation, which may result in ownership of the oil and gas under a given road to be vested in the Commonwealth or a municipality.

Authors:



Adam Speer

Roadways created by conveyance

Roadways may be created by a conveyance to the Commonwealth or a municipality. The conveyance may be in fee or may be limited to a right-of-way or easement. Some instruments do not clearly state the interest that is being granted and may be ambiguous. To ascertain the nature and quantity of the interest that was intended to be granted, a court will look to the instrument itself, and will attempt to give effect to all of the language contained in the instrument.⁶ If the grant is unclear, then the presence of warranty, release of damages and habendum clauses or the specific granting of rights to enter the grantor's land can help to determine the nature of the grant and whether the parties intended to convey an interest in fee or an interest limited to a right of way.⁷

Roadways created by taking or condemnation

Public roads, streets, highways and turnpikes may be created through the government's exercise of its eminent domain power, the power to take private property for public use. The Pennsylvania Constitution provides the Commonwealth and local municipalities with broad authority to take private land for roadway purposes.⁸ Roadways may be created pursuant the General Road Law⁹, the State Highway Law¹⁰, the various township codes¹¹, the Turnpike Commission Act¹² or by the exercise of its general power under the Eminent Domain Code¹³. Identifying the circumstances surrounding the condemnation, the time of the condemnation and the authority under which the roadway was condemned, helps to determine whether the

⁶ *Consolidation Coal Co. v. White*, 875 A.2d 318, 326 (Pa. Super. 2005).

⁷ See *Mackall v. Fleegle*, 2002 Pa. Super. 178 (2002).

⁸ Pa. Const. Art I, §10; see also 26 P. S. §101, et seq.

⁹ See 36 P.S. §1781, et seq.

¹⁰ See 36 P. S. §67-101, et seq.

¹¹ See 53 P. S. §57005 (relating to Townships of the First Class); 53 P. S. §67304 (relating to Townships of the Second Class).

¹² See 36 P. S. §652a, et seq.

¹³ See 26 Pa.C.S. §101, et seq.

¹ PennDOT Fact Book (2017), available at www.penndot.gov/about-us.

² See *Paul v. Carver*, 26 Pa. 223 (1856); see also *Firmstone v. Spaeter*, 150 Pa. 616 (1892); *Rahn v. Hess*, 378 Pa. 264, 270 (1954).

³ *Carver*, 26 at 224

⁴ *Rahn*, 378 at 269-70

⁵ *In re Altoona*, 479 Pa. 252, 261 (1978).

Commonwealth or municipality may claim an interest in the road in fee.

In general, when land is taken for a public roadway pursuant to the government's eminent domain power, the government acquires only a mere right of passage over the surface, limited in nature to that of a highway easement.¹⁴ Fee title remains in the landowner over which the road lies, or in adjacent landowners, as the case may be.¹⁵ There are circumstances under which the Commonwealth may take land for public roadways in fee simple. These instances usually involve the condemnation of land for interstate and turnpike purposes. Prior to 1979, the Pennsylvania Department of Transportation (PennDOT) generally could only condemn easements for highway purposes and could not condemn interests in fee, with limited exceptions.¹⁶ Following the 1979 enactment of 71 P.S. 513(e)(1), the department was authorized to condemn property in fee simple or in any lesser estate for all transportation purposes. PennDOT has used these powers to condemn private land for interstate purposes. In addition to interstates, the Pennsylvania Turnpike Commission has had the authority since 1937 to acquire easements, rights-of-way and other interest in lands as it deems necessary for the construction and operation of the turnpike.¹⁷

PennDOT has reported that the Commonwealth generally does not own the oil and gas rights under its roadway or within its rights-of-way, except as necessary for support of the surface.¹⁸ Most of the current deeds in lieu of condemnation contain a standard oil and gas reservation, reserving unto the grantor the right to mine and develop minerals from wells located off the roadway. However, oil and gas operators should be mindful of the limited instances in which the Commonwealth may claim an interest in fee simple.

Roadways created by dedication

Roads in plans, subdivisions and residential neighborhoods typically are created by dedication. "Dedication of a public street does not invest the municipality with fee title to the land on which the roadway rests."¹⁹ The municipality acquires the right to use, maintain and control the land as a road for the benefit of the public, while the fee continues to be vested in the owner or owners of the land.²⁰ Thus, the municipality acquires merely an easement for roadway purposes. Under the centerline presumption, abutting landowners maintain fee ownership of the land underlying the dedicated roadway to the center.

A public road is created by dedication when a landowner offers land to a municipality for its continuous use for public

travel and the municipality accepts the offer.²¹ No particular act is necessary to constitute an offer by the landowner or an acceptance by the municipality; any act which clearly illustrates an intention to offer and accept dedicated land is sufficient.²²

Pennsylvania courts have long held that where a landowner subdivides his land into lots and streets on a plan and sells the lots accordingly, there is an implied covenant to the purchaser that the streets will be forever open to the use of the public and operates as a dedication of the roads for public use.²³ If the municipality fails to accept a dedicated roadway within the statutory time period (21 years), the roadway does not become a public road. Although the road fails to become a public road, the abutting property owners do not lose their right to use the roadway as a private easement and still maintain ownership of the fee interest to the centerline.²⁴

Roadways created by prescription

Some public roadways may not have any recorded documents evidencing its creation. Although there are no recorded documents evidencing the road's creation, such roads may nonetheless be public roads by virtue of prescription. For a public road to be created by prescription, "one must show that the public used the road uniformly, adversely and continuously under a claim of right for 21 years."²⁵ Evidence of public travel, maintenance or repairs by the Commonwealth or municipality, maps or surveys generated by a government unit and approved subdivision plans may help establish that a roadway was created by prescription. If a roadway is created by prescription, the interest acquired by the public is limited to that of a right-of-way for street purposes and does not transfer any title in fee; adjacent landowners own the fee interest pursuant to the centerline presumption.

Conclusion

When analyzing ownership of the oil and gas underlying a roadway, any deeds, condemnation proceedings, subdivision plans and other instruments which purport to create the roadway should be carefully analyzed. If the interest held by the government in the roadway is limited to a right-of-way or easement, adjacent landowners own the fee title, including the interest in the oil and gas, absent a reservation. As oil and gas operations continue to expand across Pennsylvania, development under and around public roadways is inevitable. To reduce or eliminate any potential future conflicts, it is necessary for oil and gas operators to identify and lease the proper oil and gas owners.

If you would like additional information about the ownership of public roadways in Pennsylvania, contact Adam Speer at aspeer@babstcalland.com or 412-253-8826.

¹⁴ *Sterling's Appeal*, 111 Pa. 35, 40 (1886); see also *McDevitt v. People's Natural Gas Co.*, 160 Pa. 367, 376 (1894).

¹⁵ *Id.*

¹⁶ See 36 P.S. §670-210; see also 36 P.S. §2391.8. For exceptions, see 36 P.S. §478.12 (providing the department, in 1961, with the authority to condemn roadway rests stops in fee simple); 36 P.S. §2391.3-1 and 3-2 (providing the department, in 1973, the authority to condemn property in fee to accommodate highway utilizes).

¹⁷ 36 P. S. §652e

¹⁸ COMMONWEALTH OF PA. LEGISLATIVE BUDGET AND FIN. COMM., AN INVENTORY OF STATE-OWNED REAL PROPERTY AND SUBSURFACE MINERAL RIGHTS, S. 2010-383, 1st Sess., (at page 6) (2011).

¹⁹ *In re Altoona*, 479 Pa. 252, 258 (1978)

²⁰ *Id.*

²¹ *Horsham Twp. v. Weiner*, 435 Pa. 35 (1969).

²² *Id.* at 42; see also *Tri City Broadcasting Co. v. Howell*, 429 Pa. 424, 427 (1968).

²³ *Rahn v. Hess*, 378 Pa. 264, 268 (1954).

²⁴ *Estojak v. Mazsa*, 522 Pa. 353 (1989).

²⁵ *Morgan v. Richter*, 724 A. 2d 983, 987 (Pa. Cmwlth. 1999); see also 53 P. S. §67307(a).