

**82.400 Procedure for dedicating public way or easement -- Waiver in certain instances -- Presumption of dedication -- Railroad exemption -- Automatic acceptance -- Penalty.**

- (1) If any person desires to offer for dedication by recorded plat any public way or easement within the jurisdictional limits of the city or a consolidated local government, he or she shall file with the legislative body of the city or a consolidated local government, a map or plat of the territory bounded, intersected, or immediately adjacent to the proposed public way or easement, showing the proposed name, nature, and dimensions of the public way or easement offered for dedication. If the legislative body of the city or a consolidated local government decides the proposed dedication would be beneficial to the public interest and suitable for the immediate or future acceptance of the city or consolidated local government, it shall approve the map or plat, and the mayor shall subscribe a certificate of approval on the map and acknowledge the execution thereof before any public officer authorized to take acknowledgments of deeds. The map or plat may then be recorded in the office of the county clerk.
- (2) Except as provided for by ordinance in a consolidated local government, in a city of the first class, or in a county containing a city of the first class, subdivision regulations which have been adopted as provided in KRS Chapter 100, and where streets or public ways as dedicated on the final subdivision plat have been constructed, inspected, and approved in accordance with the subdivision regulations, then the procedure for filing the map or plat with the legislative body of the consolidated local government, city, or county, as the case may be, as required in subsection (1) of this section shall be waived, and the dedicated street or public way shall automatically be deemed beneficial to the public interest and shall be, by operation of law, automatically accepted for maintenance by the consolidated local government, city, or county, respectively, forty-five (45) days after inspection and final approval, and shall be a public way for all purposes, KRS Chapter 83A, regarding a city's, county's, or consolidated local government's adoption of ordinances notwithstanding.
- (3) When any property has been opened to the unrestricted use of the general public for five (5) consecutive years, it shall be conclusively presumed to have been dedicated to the city or consolidated local government as a public way or easement, subject to acceptance by the city or consolidated local government. The city or consolidated local government may, at any time after the expiration of five (5) years from the time the property is opened to the public, pass an ordinance declaring it so dedicated, and accepting the dedication, whereupon it shall be a public way or easement of the city or consolidated local government for all purposes. The lack of an actual dedication to the city or consolidated local government, or of a record title on the part of the city or consolidated local government, shall be no defense against the collection of any tax that may be levied against property abutting thereon for the payment of the cost of any improvement constructed thereon by order of the city or consolidated local government. Nothing herein shall be construed to require the expiration of five (5) years to raise a presumption of dedication in any case where,

under any rule of law in force in this state, a dedication would be presumed in less than five (5) years. Provided, however, that property of a railroad company shall not be presumed to be dedicated as a public way or easement under this section or any other rule of law in force in this state unless the company consents to said dedication in writing.

- (4) Any person who shall lodge for record in the county clerk's office, and any county clerk or deputy who shall receive for record or permit to be lodged for record, any plat, map, deed, or other instrument contrary to the provisions of this section, shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each offense.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 346, sec. 95, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 417, sec. 9, effective December 1, 2000. -- Amended 1992 Ky. Acts ch. 435, sec. 4, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 362, sec. 13, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 371, sec. 1, effective July 15, 1988. -- Created 1980 Ky. Acts ch. 233, sec. 1, effective July 15, 1980.

**Legislative Research Commission Note** (12/1/2000). The contingency on the effectiveness of this statute set by 2000 Ky. Acts ch. 417, sec. 18, was met, the voters of the Commonwealth having ratified at the general election on November 7, 2000, a constitutional amendment (see 2000 Ky. Acts ch. 399) abolishing the Railroad Commission.