

The State of South Carolina



Office of the Attorney General

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February 5, 1987

The Honorable John I. Rogers, III
Member, House of Representatives
304D Blatt Building
Columbia, South Carolina 29211

Dear Representative Rogers:

By your letter of January 28, 1987, you have asked that this Office address the following question: What effect would Code Section 58-17-160 have upon an effort by a railroad to remove an existing line through incorporated towns in Marlboro County of 500 residents or more?

Section 58-17-160 of the Code of Laws of South Carolina (1976), as last amended in 1916, provides:

In the exercise of the powers and rights conferred in this chapter no railroad shall remove its line of railway from any incorporated town of more than 500 inhabitants through which it now runs.

The original provision was part of Act No. 308 of 1915; the provision was amended by Act No. 477 of 1916 to prohibit the removal of railway lines from incorporated towns of more than 500 inhabitants, rather than from any incorporated towns of unspecified population. This Code section has apparently never been the subject of an opinion of this Office previously.

The primary objective in construing a statute is to ascertain and give effect to legislative intent. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). To determine legislative intent, words of a statute are examined and are given their plain and ordinary

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meanings, absent ambiguity. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). Use of the term "shall" connotes mandatory compliance with the statute. South Carolina Department of Highways and Public Transportation v. Phillips, 288 S.C. 189, 341 S.E.2d 134 (1986).

Applying the foregoing rules of statutory construction to Section 58-17-160 of the Code, the clear and unambiguous language, coupled with the mandatory terminology, compels the conclusion that the General Assembly has provided that a railroad not remove its line of railway from any incorporated town which has 500 or more inhabitants. While Section 58-17-1190 would permit the railroad to relocate lines or otherwise make changes, the General Assembly has directed that the line may not be removed entirely from an incorporated town of the specified population, by virtue of Section 58-17-160.

This Office has no knowledge of facts relative to removal of railway lines in Marlboro County and thus does not intend herein to comment upon a particular situation. Because regulation of railroads is within the province of the Public Service Commission, you may wish to consult with the Commission if a particular problem has arisen. Too, we note that in Section 58-17-110 the General Assembly has provided the remedy for noncompliance with the general railroad law.

We trust that the foregoing has satisfactorily responded to your inquiry. If you need additional assistance, please advise.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:lm

REVIEWED AND APPROVED BY:

Robert D. Cook

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