

1983 WL 181992 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 7, 1983

*1 G. William Thomason, Esquire
Town Attorney
Town of Ware Shoals
Post Office Box 1115
Greenville, South Carolina 29648

Dear Mr. Thomason:

Your letter of August 10, 1983, has been referred to me for reply. You have asked whether the Saluda River at the Town of Ware Shoals should be considered a navigable river as a matter of law, and if so, whether the police power of the town extends to locations in the bed of the river.

I have checked with the South Carolina Water Resources Commission, which maintains standing designations of streams and their areas of navigability. The Commission considers the Saluda River at Ware Shoals to be a navigable stream, and since this determination was made with the assistance of legal counsel, this office has no reason to question it.

A check of a number of authorities indicates that while municipal corporations may exercise police power over navigable waters, the authority to do so must be delegated by the State. See 65 C.J.S. Navigable Waters, § 10. In this state there is no statute which provides for such authorization, although §§ 5-7-140 and 5-7-150 do authorize the exercise of such powers in the case of coastal municipalities.

It appears that this situation leaves a gap, as a practical matter, in law enforcement. I would suggest that it be brought to the attention of the Municipal Association to see whether corrective legislation could be passed which would remedy this problem.

Sincerely yours,

Kenneth P. Woodington
Senior Assistant Attorney General

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