

1981 WL 157930 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 24, 1981

*1 Honorable D. Malloy McEachin, Jr.
House of Representatives
114-A Blatt Building
Columbia, South Carolina 29211

Dear Representative McEachin:

You have requested an opinion as to whether certain property owners may control access to a portion of an artificially created lake.

The lake in question is known as Forest Lake and is in Florence County. According to your letter, it was formed in the early 60's by damming a portion of Middle Swamp. It consists of approximately 160 acres, $\frac{3}{4}$'s of which lies west of Highway No. 103 and the balance is east of Highway No. 103. Prior to the formation of the lake, all property owners west of Highway No. 103 conveyed their property which formed the bed of the lake into a corporation, Forest Lake of Florence, Inc. This corporation has enacted restricted covenants as to the use of the property, both the lake bed and the property surrounding the lake. One of these restricted covenants limits access to the entire lake to members of the Forest Lake Owners Association and their guests.

Your letter further states the following facts 'the property east of Highway No. 103 was not was not deeded to Forest Lake of Florence, Inc. The property owners acquiesced in the flooding of their land, but refused to participate in the corporation or allow any control over their property. * * * The property owners on the lake east of Highway No. 103 are selling general admission tickets for people to fish on the lake and the general public is using the entire lake.'

You have enclosed two affidavits which indicate that prior to the formation of the lake, this portion of Middle Swamp was non-navigable. I have conferred with Jeffrey Havel of the Water Resources Commission, who confirms that the Commission has for its purposes declared Middle Swamp to be non-navigable.

As to the right to control access, the South Carolina Supreme Court has held that such a right exists where the person seeking to control access owns the bed of the lake:

... the defendant, as owner in fee simple of his land, clearly has the exclusive right to use and control that part of the lake which lies above his own land, and has the right to exclude plaintiffs and all other persons claiming by, under or through them, from any use whatsoever of the defendant's lands and water above said lands.

[Morris v. Townsend](#), 253 S.C. 628, 634, 172 S.E.2d 819 (1970).

It would thus seem clear that in the absence of any agreements or contracts to the contrary and in the absence of long use sufficient to create a prescriptive right in the public (neither of which questions is discussed here), the Association may control access, but only to that portion of the lake in which it owns the bed.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

1981 WL 157930 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.