

1980 WL 120811 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 11, 1980

**\*1 SUBJECT: Counties, Highways, Municipal Corporations, Taxation and Revenue Statutory Construction**

Section 12-27-380, as amended, requires that funds collected pursuant to the gas tax be spent only on county roads and that county roads within municipalities be allocated a fair share of the money. However, § 12-27-380, does not require counties to make cash payments to municipalities but allows the counties to decide the method used to maintain county roads located inside corporate limits.

Mr. Russell B. Shetterly  
Executive Director  
South Carolina Association of Counties

QUESTION:

An Act of the General Assembly, H. 3512, amended the provisions of § 12-27-380 that provided for the use of the gasoline tax distributed to the counties. By reason thereof the following questions are presented:

1. Does the section as amended require the county to make cash payments to the municipality based on an equitable formula?
2. Since the funds go to the county, may the county insist that its crews do any requested work within the municipality?
3. Because the section still mandates that the funds be exclusively used on county roads, are we limited solely to using the funds on county roads even if none exist within incorporated areas?

AUTHORITY:

[S. C. Code §§ 12-27-380; 4-9-30; 4-9-40; 57-17-80; 57-17-610](#)

DISCUSSION:

[S. C. Code § 12-27-380](#), as amended, provides in pertinent part:

‘The license tax of 8.84 cents per gallon on gasoline as levied and provided for in this article shall be distributed as follows: 7.84 cents on each gallon shall be turned over to the Department of Highways and Public Transportation for the purpose of the Department and one cent per gallon shall be distributed to the counties of the State to be used exclusively for the construction and maintenance of county roads. Provided, however, that the funds collected under the provisions of this section shall be used in an equitable manner to construct and maintain the roads in the incorporated and unincorporated areas of the county.’ (Emphasis added)

Addressing your third question first, the quoted statute clearly limits the expenditure of funds for construction and maintenance to county roads. By definition maintenance involves the upkeep and refurbishment of roads which already exist. [Section 12-27-380](#) would therefore preclude expenditure of the funds for the maintenance of roads which were not part of the

county road system whether such roads were inside or outside incorporated areas. However, the proviso would require that maintenance funds be equitably apportioned between those county roads located inside incorporated areas and those located outside incorporated areas. The proviso prohibits the neglect of one type of county road to the benefit of the other.

As to construction funds, the answer is somewhat different. Construction refers to the building of roads which did not previously exist. The proviso requires an equitable expenditure of construction funds without regard to the boundaries of incorporated areas. However, the allocation of construction funds has traditionally been less rigid than the allocation of maintenance funds. Whether or not to construct a road depends on many variables: contiguous population; availability of money from outside sources; existing and projected traffic patterns; and existing and projected roads; to mention only a few. On the other hand, the expenditure of maintenance funds is basically controlled by the relative condition and importance of the roads to be maintained. It therefore appears to be more difficult to evaluate whether construction funds are being fairly divided.

\*2 The word equitable has been defined as ‘just, fair, and right in consideration of the facts and circumstances of the individual case.’ Black’s Law Dictionary, 4th ed. The requirement imposed by the statute, then, is to treat areas inside incorporated areas fairly. No more precise definition is available and the question of whether the statute’s edicts have been fulfilled can only be answered by reviewing specific actions in view of the circumstances attendant to those actions.

Nevertheless the proviso does mandate that ‘funds . . . be used in an equitable manner to construct . . . the roads in the incorporated and unincorporated areas of the county. The meaning of this proviso is to prohibit the decisions of whether or not to build a road from being based on whether the road will or will not be within the limits of an incorporated area of the county.

As to the first question posed by your letter, [S. C. Code § 4-9-40 \(1976\)](#) states: ‘Any county may perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body . . .’ (emphasis added). [S. C. Code § 4-9-30\(5\) \(1976\)](#) grants to county governments the authority to ‘make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads . . .’ Because roads are expressly listed as a function of county government then [§ 4-9-40](#) permits, but does not require, the county to contract with a municipality to maintain those county roads located within the municipality. Nothing in [§ 12-27-380](#), as amended, affects those statutes.

As to the second question posed by your letter, a careful review of Titles 4 and 5 and Chapter 17 of Title 57 of the South Carolina Code of Laws reveals nothing that would prohibit a county from using its own crews to work on the county roads located within a municipality. Nor is there any authority granted to municipalities to prohibit county crews from working inside the corporate limits. Section 57-17-610 gives counties the authority to hire overseers and laborers to work on the public highways. Section 57-17-80 makes the county’s governing officials criminally liable for failing to maintain public highways and bridges properly. Therefore, the existing laws not only give county governing officials the authority to maintain public highways but also the responsibility to do so. This responsibility can be exercised either by contract or through employees hired by the county for such purposes. Nothing in [§ 12-27-380](#), as amended, affects those statutes.

#### CONCLUSION:

It is therefore the opinion of this office that the amendments recently made to [S.C. Code § 12-27-380](#):

- (1) Do not require the county to make cash payments to a municipality for maintenance of roads inside the corporate limits;
- (2) Do not restrict the authority of the county to choose the method for performing needed maintenance work on county roads located within corporate limits and may insist that its crews perform such work.

\*3 (3) Do not change the previous requirement that those funds collected under [§ 12-27-380](#) may be spent only on county roads. However, areas within corporate limits cannot be automatically excluded from consideration when new road construction

projects are planned but rather must have their needs evaluated by the same criteria used for areas located outside corporate limits.

Sincerely yours,

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