



ALAN WILSON
ATTORNEY GENERAL

October 12, 2015

Chief Sam W. White
City of Union Public Safety Department
215 Thompson Blvd.
Union, SC 29379

Dear Chief White:

This Office has received your request regarding whether people who own property adjacent to a state highway can place objects (such as cement blocks), flagging, or signs on the right of way. You explain that these properties are located around the Union County Fair Grounds and that these items are placed to prevent people from parking their motor vehicles on the right of way¹ during the week that the fair is in town. The property owners do this so that they can charge the people going to the fair a fee for parking on their property. You inform us that the South Carolina Department of Transportation and the local governing body do not restrict this from occurring.

LAW/ANALYSIS:

The Code of Laws of South Carolina does not appear to answer your question. However, our State Supreme Court addressed this issue in Ankrim v. S.C. State Highway Dep't, 251 S.C. 42, 159 S.E.2d 911 (1968). In Ankrim, landowners had signs, fences, and an ice vending machine in a highway right of way. The Court determined that the Highway Department had the right to require removal of the aboveground structures which were placed on the public right of way because they constituted a hazard and a dangerous obstruction to those traveling on the adjacent highway. Additionally, the rights of abutting owners were subordinate to the rights of the public. The Court opined:

[i]t is fundamental that any use of a highway or street for a purpose other than the one for which it was primarily established is always subject to the police power. Any right granted with respect thereto is at all times subordinate to the superior rights of the public. Sammons v. City of Beaufort, 225 S.C. 490, 83 S.E.(2d) 153. The duty rests upon the State Highway Department to not only keep the paved portion of the road in reasonably safe condition for motor vehicle travel but also to keep the road adjacent to the pavement and the shoulders of the highway in such condition as will meet the reasonable needs of the traveling public. Bunton v. State Highway Department, 186 S.C. 463, 196 S.E. 188.

¹ We will assume for purposes of this opinion that these objects are placed in the right of way since we do not have an independent means of verifying this.

Rights in highways granted to individuals or to corporations are at all times held in subordination to the superior rights of the public.

Id.

Applying the law to the adjoining landowners, the Court in Ankrim stated:

The appellants [landowners] had no right to do anything in respect of the respondent's [Highway Department's] right-of-way which would impair the safety of travelers or in anyway interfere with the use of the way as a highway by the public, or to use for any purpose which amounts to a perversion of it from the uses for which it was intended. To allow the appellants [landowners] to use the right-of-way of the respondent [Highway Department] in such a manner indicated by the evidence here so as to create a hazardous and dangerous condition to the traveling public would be to subordinate the public safety and welfare to the rights of the abutting landowners. The rights of an abutting owner who owns the fee to the land over which the highway runs are subject and subordinate to the easement and servitude in favor of the public.

Id.

Supporting Ankrim is Owens v. Owens, 193 S.C. 260, 8 S.E.2d 339 (1940) (quoting Gilsey Buildings, Inc. v. Incorporated Village of Great Neck Plaza, 170 Misc. 945, 11 N.Y.S.2d 698)), in which the State Supreme Court quoted:

[t]he rights of an abutter [abutting property owner] are subject to the right of the state to regulate and control the public highways for the benefit of the traveling public.***Although the abutting owner may be inconvenienced by a regulation, if it is reasonably adapted to benefit the traveling public, he has no remedy unless given one by some express statute.***

Since there is not an express statute stating otherwise, the owners of the property around the fair grounds can not place objects (such as cement blocks), flagging, or signs on the state highway right of way even if it inconveniences them. Their rights are subordinate to the rights of the public to be safe from hazardous conditions.² This is supported by our prior opinions in which we determined that property owners adjacent to a highway could not erect a fence within the right of way. See S.C. Atty. Gen. Op., January 6, 1960 (1960 WL 11280); S.C. Atty. Gen. Op., February 25, 1969 (1969 WL 15474).

The adjoining landowners can request assistance from the Department of Transportation or from the local governing body to prevent people from parking in the right of way. By statute,

² It should be noted that this Opinion applies to aboveground structures only. See S.C. Atty. Gen. Op., June 12, 1980 (1980 WL 131247) for encroachments located underground.

[t]he Department of Transportation with respect to state highways may place signs prohibiting or restricting the stopping, standing or parking of vehicles on any highway where, in its judgment, such stopping, standing or parking is deemed by the Department of Transportation to be hazardous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs and no person shall stop, stand or park any vehicle in violation of the restrictions stated on such signs.

S.C. Code Ann. § 56-5-2540 (1976 Code, as amended).

The local governing body can regulate parking within its territorial jurisdiction. Section 56-5-710 provides:

[s]ubject to the limitations prescribed in Section 56-5-930³, the provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

- (1) regulating the standing or parking of vehicles. . . .

S.C. Code Ann. § 56-5-710 (1976 Code, as amended).

CONCLUSION:

In conclusion, the owners of the property around the fair grounds can not place objects (such as cement blocks), flagging, or signs on the state highway right of way. They can, however, request assistance from the Department of Transportation or from the local governing body to prevent people from parking in the right of way.

³ Section 56-5-930 states that “[n]o local authority shall place or maintain any traffic-control devices upon any state highway without having first obtained the written approval of the Department of Transportation.” S.C. Code Ann. § 56-5-930 (1976 Code, as amended).

In a prior opinion, this Office discussed sections 46-282 and 46-302, which are the predecessors to section 56-5-710 and section 56-5-930. We explained that traffic-control devices can be signs and that the apparent contradiction between the statutes can be resolved because the local authority is limited to acting in its own jurisdiction and can not act extra-territorially. See S.C. Atty. Gen. Op., August 17, 1970, No. 2953 (1970 WL 12230).

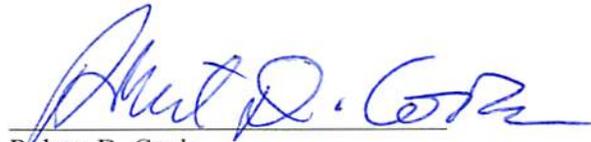
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Sincerely,

A handwritten signature in blue ink that reads "Elinor V. Lister". The signature is written in a cursive style with a small dot above the 'i' in "Lister".

Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink that reads "Robert D. Cook". The signature is written in a cursive style with a horizontal line underneath the name.

Robert D. Cook
Solicitor General