

1977 S.C. Op. Atty. Gen. 174 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-232, 1977 WL 24574

Office of the Attorney General

State of South Carolina

Opinion No. 77-232

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*1 TO: T. Allen Legare, Sr.
Legare, Hare & Smith
Charleston, S.C.
BY: A. Camden Lewis
Assistant Attorney General

QUESTION:

Does the South Carolina Public Railways Commission have the authority to condemn land for borrow pit use?

STATUTES AND CASES:

Section 57-5-320 Code of Laws of South Carolina (1976); Section 58-19-30 Code of Laws of South Carolina (1976); [Haynes v. Jones, 91 Ohio St. 197, 110 NE 469, 470 \(1915\)](#)

DISCUSSION:

Section 58-19-30 Code of Laws of South Carolina (1976) in paragraph 5 states that the Railway Commission shall have the power of eminent domain and may proceed in the same manner as provided by law for the State Highway Department and others. The section specifically mentions Title 57 of the Code.

In Title 57 at 57-5-320 the Code provides that the Highway Department may acquire an easement or fee simple title to real property for, among other specified purposes, borrow pits.

The case of [Haynes v. Jones, 91 Ohio St. 197, 110 NE 469, 470 \(1915\)](#) has stated that a borrow pit constitutes an appropriation of the land itself for which the state must compensate the owner. The Court here implied that a borrow pit was a taking similar to an easement or right of way for which the state retains the title and compensates the owner.

CONCLUSION

It is the opinion of this Office that the Railway Commission has the requisite statutory authority to condemn land for borrow pit purposes.

A. Camden Lewis
Assistant Attorney General

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