

1979 WL 43235 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
August 4, 1979

***1 RE: File 4.619—Road S-208—Anderson County Project C-619—(Tract 14)**

Mr. S. O. Holstein
Right of Way Engineer
State Highway Department
P. O. Box 191
Columbia, South Carolina

Dear Mr. Holstein:

You have asked for an opinion of this Office whether under the following factual situation the Department should now furnish the landowner a copy of the resolution of the Board of Condemnation and allow the landowner twenty (20) days within which to appeal therefrom:

Several years ago, the Department, by certified mail, return receipt requested, mailed a copy of the resolution of the Board of Condemnation to the landowner. After several weeks, the Post Office returned the package marked 'unclaimed' to the Department. Following the Post Office's procedure, when the rural deliveryman attempted to deliver the package and no one was at the residence, the postal carrier left a notice of certified mail in the landowner's mailbox. The landowner did not call for the mail at the Post Office and now contends that he did not receive the notice of certified mail in his mailbox.

Section 33-137 of the 1962 South Carolina Code of Laws, as amended, provides in part as follows:

The board shall furnish copies of the resolution to the owner and to the Department. The resolution shall contain a statement that any appeal by the landowner shall be served by mail or otherwise upon the Department within twenty days after the receipt of the resolution in accordance with the provisions of Section 33-139. (Emphasis added)

Section 33-139, 1962 South Carolina Code of Laws, allows the landowner twenty (20) days within which to serve his notice and grounds of appeal upon the Department which twenty (20) days commences to run 'After the receipt of the resolution of the condemnation board.' (Emphasis added)

One of the primary rules in a construction of a statute is that the words used therein should be taken in their ordinary and popular significance unless there is something in the statute requiring a different interpretation. [Hatchett v. Nationwide Mutual Insurance Company, 224 S.C. 425, 137 S.E.2d 605 \(1964\)](#). In my opinion, these statutes, in clear and unambiguous language, contemplate two relevant requirements regarding the resolution of the Board of Condemnation:

- (1) That the landowner must receive the resolution; and
- (2) That the resolution itself must inform the landowner had of the twenty-day time limit for his appeal.

It is my opinion that neither of these two requirements have been met in this case. There would be a factual issue of whether the notice of certified mail was left in the landowner's mailbox, the Post Office saying that it was, the landowner saying that it was not or that if it were, he never received the notice. Even if this factual issue were resolved in the Department's favor, all that this would prove is that the landowner had received a notice of certified mail. In my opinion,

this would satisfy neither of the two requirements set forth above. In the first place, this would not constitute receipt of the resolution itself, but merely receipt of a notice of certified mail. In the second place, the notice of certified mail would not inform the landowner of the twenty-day time limit for his appeal.

*2 For these reasons, I recommend that your Office furnish the landowner, through his attorney, a copy of the resolution of the Board of Condemnation and allow him twenty (20) days within which to file his notice and grounds of appeal. I would suggest that in future condemnations this problem can be avoided by having the right of way agent personally deliver the resolution of the Board of Condemnation to the landowner if the certified mail is returned to the Department. Sincerely,

R. Evan Palmer
Assistant Attorney General

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