

1978 WL 34924 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 2, 1978

\*1 Sheriff Frank Powell  
County of Richland  
P. O. Box 143  
Columbia, S. C. 29201

Dear Sheriff Powell:

Thank you for your letter of May 24, 1978, to the Attorney General in which you request an opinion concerning whether the roads to the Spring Valley residential area are owned by the county or state. You have enclosed photographs of signs posted at the entrance to the subdivision and have included a summary of the arguments and sections of law concerned.

Section 56-5-430 defines 'highway' as the 'entire width between boundary lines of every way public maintained when any part thereof is open to the use of the public for purposes of vehicular travel.'

Section 56-5-450 defines 'private road' as 'every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other others.' The distinction between 'highways' and 'private roads' is based on the right of the public to use the road for vehicular travel. See 33A, Words and Phrases, 'Private Road or Driveway'.

As to a factual determination of the nature of the particular roads in the Spring Valley Subdivision, such appears to be the function of the courts to decide when there is a legal dispute as to ownership. Suffice it to say that the signs posted at the subdivision entrance, while evidence of private ownership, are not conclusive in the presence of contrary evidence indicating a public character to the subject roads. The rights of the respective parties and the determination of the character of the subject roads, however, must ultimately be left to the courts.

Once ownership has been established, I am informed that the proper procedure for transferring the subject roads to the county is for the owner or representative thereof to request such action by letter to appropriate county officials. The county will then conduct an inspection of the subject roads and note all deficiencies, if any, in meeting county standards. Once county standards are met, I am further informed, the matter would be submitted to County Council for appropriate action. A similar procedure is employed by the South Carolina Department of Highways and Public Transportation when such roads are offered to the state.

I trust the preceding discussion adequately answers your question, however, if any further explanation is required, please feel free to contact me.

Very truly yours,

Richard P. Wilson  
Assistant Attorney General

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