

1978 WL 35115 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 18, 1978

*1 The Honorable Clyde M. Dangerfield
Member
House of Representatives
869 America Street Extension
Charleston, South Carolina 29403

Dear Mr. Dangerfield:

This is in response to your request of August 22, 1978, concerning (1) the validity of the Isle of Palms City Council's rescission of their prior formal resolution approving the location of a proposed transportation facility, and (2) assuming the legitimacy of such action, the existence of possible theories of recovery for funds advanced in reliance on the original approval. It is the opinion of this Office that the authority of a local governing body includes the power to rescind prior ordinances and resolutions and such rescissions cannot be judicially attacked if the prior resolution has not resulted in the creation of vested rights.

The authority of a municipal corporation regarding public improvements is governed by 'The Municipal Improvement Act of 1973', §§ 5-37-10 *et seq.*, SOUTH CAROLINA CODE OF LAWS (1976). The Act authorizes public improvements within the corporate limits of the city (§ 5-37-30), and provides for procedures relating to resolutions (§ 5-37-50) and the publication thereof (§ 5-37-60), but does not specifically address the question of rescission. The Act constitutes statutory recognition of the fact that '[o]rdinarily, the first step in the improvement proceeding is a preliminary ordinance or resolution declaring the intention to make the specified improvement, or declaring the proposed improvement expedient and the existence of a necessity therefor.' McQUILLIN, MUNICIPAL CORPORATIONS § 37.66 (3rd ed. 1971).

However, 'it is generally competent for the municipal governing body to repeal the ordinance or resolution ordering the improvement, and this it may do either in express terms or by clear implication.' 63 C.J.S. Municipal Corporations § 1124 (1950). Similarly, 'the legislative body of the corporation, or any board or department thereof, possesses the unquestioned power to rescind prior acts and votes at any time thereafter until the act or vote is complete' McQUILLIN, MUNICIPAL CORPORATIONS § 13.49 (1971).

Notwithstanding this general power to rescind resolutions, '[a]n improvement ordinance or resolution may not be rescinded in such manner as to impair rights which have vested thereunder.' 63 C.J.S. Municipal Corporations § 1124 (1950). See also, Dal Maso v. Board of County Commissioners, 182 Md.200, 34 A.2d 464 (1943); First National Bank v. Mayor and Council of Borough of Englewood Cliffs, 123 N.J.L. 590, 10 A.2d 290 (1940). The question thus becomes: did the City Council's initial approval of the 14th Street terminus result in the creation of any vested rights? Generally, vesting of rights occurs when the act contemplated by the resolution is completed; 'if the act has been carried out, the power to rescind does not exist.' McQUILLIN, MUNICIPAL CORPORATION § 13.49 (1971). In the situation at hand, construction of the bridge has not commenced, nor have contracts regarding that construction been entered into. The only relevant third party right is the contract with the consulting firm for an environmental impact study, which could be characterized as an overall feasibility study more easily than as the commencement of the contemplated act. Therefore, so far as the information contained in your letter indicates, there appears to have been no vested rights created by the City Council's initial resolution, hence the Council may validly rescind that resolution.

Kindest personal regards,

*2 C. Tolbert Goolsby, Jr.
Deputy Attorney General

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