

1976 S.C. Op. Atty. Gen. 389 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4525, 1976 WL 23142

Office of the Attorney General

State of South Carolina

Opinion No. 4525

November 23, 1976

*1 O. Eugene Powell, Jr., Esquire
Union County Attorney
P. O. Box 266
Union, South Carolina 29379

Dear Mr. Powell:

In response to your request for this Office's comments and opinion as to several questions concerning the maintenance of roads and highways in Union County, I shall respond to them in the order in which you have posed them.

1. The guidelines for the construction and maintenance of county roads which you enclosed with your letter seem generally to be free of legal objection; one point, however, might be somewhat questionable. The guidelines specify that property owners must dedicate free of charge the right of way. This requirement may constitute an unconstitutional taking without compensation under Article I, Section 13 of the State Constitution, as amended. The question is not a clear one, however, since the fee to the property as to which the county obtains the right of way remains in the property owner. On the other hand, a denial to the property owner of the beneficial use and enjoyment of the owner's land has been held to be a 'taking' within the meaning of the constitutional prohibition against such a taking without compensation therefor. [King v. S. C. State Highway Dept.](#), 248 S.C. 64, 149 S.E.2d 64 (1966); [Lail v. S. C. State Highway Dept.](#), 244 S.C. 600, 136 S.E.2d 306 (1964). See also, § 33-811, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended.

2. Due to the pending federal litigation involving the former Union County Supervisor, an opinion from this Office as to whether or not the county can lawfully pave, grade or otherwise maintain private property over which the county has obtained a right of way easement would be inappropriate.

3. In my opinion, the county can enter private property for the purpose of repairing damage done by improper road drainage without contracting for this service pursuant to Section 14-3467 of the Code. Most probably, that Section, as well as other provisions of Chapter 60 of Title 14 of the Code, have been impliedly repealed by the provisions of Act No. 283 of 1975, the 'home rule' legislation.

4. The county governing body is authorized by the provisions of Section 14-3703(2) of the Code (Cum. Supp.) to lease, sell 'or otherwise dispose of' real property. Accordingly, in my opinion, the Union County Council can validly deed real property to another political subdivision without receiving compensation therefor, assuming that the political subdivision involved is authorized to hold title to real property.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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