

1975 WL 29678 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 8, 1975

*1 Mr. C. W. F. Spencer, Jr.
Attorney at Law
P. O. Box 790 C.S.S.
Rock Hill, South Carolina 29730

Dear Mr. Spencer:

Enclosed please find a Memorandum drafted by Robert N. Wells, Jr., Esquire, of our office relative to the questions raised in your unreleased opinion on Public Law 91-646 and its application to rights-of-way granted to the City of Rock Hill by individual landowners in exchange for public improvements to their property.

As Mr. Wells makes clear, we agree with your contentions that, under South Carolina law, those landowners have already received 'just compensation,' and, further, that Section 305 of P.L. 91-646 requires adherence to State law.

With kindest regards,

Karen LeCraft Henderson
Assistant Attorney General

ATTACHMENT

MEMORANDUM

IN RE: Opinion of Mr. C. W. F. Spencer, Jr., City Attorney, Rock Hill, South Carolina

The question to be decided is whether the City of Rock Hill must make payments to landowners for their rights of way, which were voluntarily given to the City by the landowners in exchange for public improvements that enhanced the landowners' property. In deciding this question, the important consideration is whether the benefit to the landowners by way of the public improvements can be considered full compensation for the taking of the landowners' rights of way. In South Carolina the answer must be a definitive yes.

Under the South Carolina Constitution of 1895, the provision for the exercise of the power of eminent domain by agencies of government, Art. I, Section 17, is as follows:

Private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made therefor. [Emphasis added.]

(Note: Under the recent revision of the South Carolina Constitution, the above provision has now been transferred to Art. I, Section 13). This provision has been specifically held to apply to the taking of property by a municipal corporation. [Smith v. City of Greenville](#), 229 S.C. 252, 92 S.E.2d 639 (1956). There is a marked difference between this provision in Art. I, Section 17, and that in Art. IX, Section 20, the section providing for the exercise of the power of eminent domain by private corporations, in that the latter specifically excludes from the measure of compensation any benefits inuring to the landowner as a result of improvements to the land. However, no such language appears in Art. I, Section 17, which would exclude benefits to the landowner in the determination of 'just compensation.' [Smith v. City of Greenville](#), *supra*; [City of Spartanburg v. Belk's Department Store](#), 199 S.C. 458, 20 S.E.2d 157 (1942), [Wilson v. Greenville County](#), 110 S.C. 321, 96 S.E. 301 (1918). As stated in the [City of Spartanburg](#) case,

the word 'compensation' seems to have been used advisedly. It means the balancing of things against each other; the balancing of benefits against loss and damage Therefore, when part of a tract is taken, just compensation cannot be determined without considering the manner, purpose, and effect of the taking upon the remainder, insofar as these produce benefit as well as loss and damage, and if the former exceeds the latter, just compensation has been made. 199 S.C. at ??, 20 S.E.2d at 164.

*2 In the present situation, the public improvements which the City of Rock Hill made on the landowners' property were definitely of a greater value than the value of the rights of way which the City took in order to make the improvements. Therefore, under South Carolina law, just compensation has been made, and no monetary payments by the City to the landowners are needed. Though the United States Department of Housing and Urban Development has attempted to use the 'Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970' as a tool to compel the City of Rock Hill to pay a monetary amount for the acquisition of the landowners' rights of way, it must be noted that that Act is limited by the phrase in Section 305 thereof, 'to the greatest extent practicable under State law.' Thus, under the Act, any agencies of the federal government must comply with state law, and, in this case, the law of the State of South Carolina prevents the City from having to pay any additional compensation. The landowners have already received 'just compensation' in the form of the improvements on their property.

Robert N. Wells, Jr.
Special Counsel

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