

1975 WL 28884 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 4, 1975

\*1 Mr. Felix L. Finley, Jr.  
County Attorney  
Pickens County  
Messrs. Finley, Ponder & Warlick  
Attorneys at Law  
Post Office Box 543  
Pickens, South Carolina 29671

Dear Mr. Finley:

Thank you for your letter of May 28, 1975, requesting the views of this Office on the following items set forth in the ordinance of the Pickens County Council which is referred to as the 'proposed 1975-76 County Budget Ordinance.' Item P reads as follows:

'No money, labor or material shall be expended, performed or used by Pickens County in the construction or improvement of any street or road in any subdivision, or property to be subdivided, owned by any person, firm or corporation until the following requirements are met:

'1. Roads shall be graded by the developer to a true line and grade. Cut sections shall be a minimum of 36 feet and fill sections shall be a minimum of 30 feet with adequate drainage structures. The minimum right of way for extensions on existing roads shall be 40 feet and a minimum right of way for new roads shall be 50 feet.

'2. No street in a private subdivision shall be surfacetreated where there are no residences completed.

'3. Deeds for roads will not be accepted by Pickens County until roads are inspected, approved and recommended to County Council by the County Supervisor. It is further understood that such approved work shall be performed in accordance with the availability of appropriated funds made each year for Roads and Bridges.'

The ordinance appears to authorize the expenditure of money, labor or material in subdivision property, provided the roads in such property shall be developed by the owner to minimum requirements which the ordinance establishes. Sub-item 3 refers to deeds for roads to be accepted by Pickens County. If the ordinance is applied so as to authorize the expenditure of public monies, labor or materials in subdivision lands, without such roads having been accepted in the County road system, then, in such event, it is my opinion that the ordinance would be invalid for the reason that it would thereby utilize public monies for the benefit of private individuals contrary to constitutional prohibitions. If, on the other hand, the ordinance is designed to merely require that roads be improved to certain minimum requirements before their acceptance into the County road system, then I see no objection to it; but this is not entirely clear to me from a reading of the entire Item P. I am enclosing herewith copies of some previous opinions of this Office, as well as orders of circuit courts, which enjoin the use of public monies in similar circumstances on constitutional grounds. These set forth the basis of the conclusions which I have stated herein.

Item Q reads as follows:

'No stone, surfacetreatment or other materials shall be placed on private property. No other work shall be performed on private property with the exception of maintaining of existing dirt driveways.

\*2 'No money, labor or materials shall be expended for burying or disposing of dead animals.'

In my view, the County may expend money for the removal of large animals who are dead if the presence of such animals constitutes a danger to the health or welfare of the community. I do not feel that the County is compelled to undertake this task but may require that large dead animals be removed by the owners or other persons responsible. The matter appears to be one of whether the presence of dead animals constitutes a danger from the standpoint of the health of the community; if so, in my opinion, the County would clearly be authorized to utilize public monies for the disposition of such animals. On the other hand, there is no reason why the County may not place this duty upon the private individual responsible for the property or for the animal.

With best wishes,  
Very truly yours,

Daniel R. McLeod  
Attorney General

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