

1975 WL 28904 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 10, 1975

\*1 M.W. Cantrell  
Captain  
South Carolina State Highway Department  
Charleston Heights, S. C. 29405

Dear Captain Cantrell:

Your letter of May 20, 1975, has been referred to me for reply. You inquire as to any extant legal proscription against selling or soliciting on the Highway Department right of way. Specific reference is made to the sale of pecans, peaches and fireworks along Highway 17 South in Jasper County. At the outset I might point out that research has failed to reveal any provision of law that would authorize law enforcers to prosecute individuals for selling items in the manner in which you contemplate. Put differently, I have failed to find any provision of law on this point. However, research has revealed that the Highway Department has the right to require the removal of signs, billboards or other encroachments from its right of way. [Ankrim v. S. C. State Hwy. Dept., 251 S.C. 42, 159 S.E.2d 911 \(1968\)](#); 1960-61 Op.Atty.Gen. at 319; 1971 Op.Atty.Gen. at 67. It would appear that the Highway Department could take action through magistrates' courts to prosecute those who encroach on its right of way. It is transparent, then, that you could not unilaterally on your own motion seek the removal of nor prosecute those responsible for the sale of peaches and pecans, etc. on the Highway Department right of way along Highway 17 South. In addition, I am given to understand that recent federal legislation has been enacted that severely restricts the sale of fireworks. A peculiar combination of circumstances prevents me from enclosing a copy of the federal law regarding fireworks along with a copy of the other materials herein cited. I suggest that you contact the State Fire Marshall for a more exhaustive explanation as to the rules and regulations governing the sale and storage of fireworks.

With best wishes, I am,

Herman L. Moore  
Law Clerk

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