

1975 WL 28991 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
July 7, 1975

*1 Honorable Shirley L. Johnson
Councilwoman
City of Goose Creek
P. O. Box 236
Goose Creek, S. C. 29445

Dear Councilwoman Johnson:

Please excuse the tardiness of this reply which resulted from the confusion while our Office was moving. You have requested information on several questions arising out of the situation in Goose Creek where a resident was ordered to clean his vacant lot and in so doing filled in a main drainage canal for which the developer of the subdivision owns an easement.

Municipalities in this State are given the power to abate and remove nuisances within their limits. Code of Laws of South Carolina, § 47-66. The maximum that 'every man must so use his property as not to interfere with his neighbor' is the base upon which nuisance law rests. *McQuillan Municipal Corporations* (1969), § 24.58. Generally speaking, the law will balance the costs of abating a nuisance versus the harm which is done in deciding whether relief should be granted. It would seem that the drainage ditch could be cleared at little expense relative to damage to the adjacent property which would result from flooding.

Additionally, § 47-68.1 of the Code allows a municipal corporation to acquire by eminent domain an easement for any public purpose. The 'public purpose' requirement as applied to the condemnation of property for public sewers or drains has been held to be so manifestly for public use that it has seldom been questioned and never denied. *McQuillan, Municipal Corporations*, § 32.60. In this regard, the courts have indulged in a presumption that the community at large is benefited although certain individuals are specially assisted. *McDaniel v. Columbus*, 91 Ga. 462, 17 S.E. 1011 (1093).

The procedure for condemnation is set out in the Code at §§ 25-161 through 25-169 which implements South Carolina Constitution, Article 1, § 77, by providing a method whereby is ascertained the 'just compensation' to which the landowner is entitled by reason of the taking of his property by a governmental agency. May I suggest that the city attorney for Goose Creek be apprised of the situation and he would be able to carry out the procedure which the law requires. This Office will be glad to render any assistance it can to the Council or city attorney should you decide to take up the matter.

I hope I have been of some help. Please do not hesitate to call on us further if needed.

Sincerely,

Wally Smith
Law Clerk

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