

1975 WL 29263 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 12, 1975

*1 Mr. William R. Byars, Jr.
County Attorney
P. O. Box 590
Camden, South Carolina 29020

Dear Mr. Byars:

As I understand the facts set forth in your letter of August 28, 1975, and our conversation of September 9, 1975, the Lugoff Water District has a facility located near the Wateree River, access to which is via a private road. This road, running through property owned by a lumber company, exists mainly for the benefit of and is used mainly by the water district. You have requested an opinion from this office as to whether county equipment can be used to maintain this road as the road is presently in bad condition and the water district has no equipment for such work.

This office has consistently advised local authorities in the various counties of our state that the expenditure of public funds and the use of public machinery on private roads and driveways in which the public has no legal interest is unlawful. See, 1961 OPS.ATTY.GEN. 168; 1962 OPS.ATTY.GEN. 176; 1964 OPS.ATTY.GEN. 91. The basis of this conclusion lies in the fact that maintenance and upkeep of private roads and driveways constitutes an expenditure of public funds and utilization of public resources for private purposes.

Article X, § 9 of the Constitution of South Carolina provides that money shall be drawn from the Treasury only in pursuance of appropriations made by law. This section has been construed by our Supreme Court to prohibit any officers of the State from applying public funds to any purpose not authorized by law. [Butler v. Ellerbe](#), 44 S.C. 256, 22 S.E. 425. The universally recognized limitation upon the power of the State to tax and expend tax monies for private benefit was declared forcefully by the United States Supreme Court in [Savings and Loan Association v. Topeka](#), 22 L.Ed. 455, 20 U.S. (Wall) 655:

To lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals . . . is nonetheless a robbery because it is done under forms of law . . .

According to the facts you have provided us, neither Kershaw County nor the Lugoff Water District has any legal interests or rights in the road to the facility near the Wateree River. Thus, it can be assumed that the owners of the property through which the road has been built conceivably could deny access to the facility at their discretion and utilize the road solely for private purposes. Therefore, so long as neither the county nor the water district, both being political subdivisions of the State, has any legal interests or rights in the road, expenditure of public funds and the use of public machinery for maintenance and upkeep of the road would be unlawful.

Sincerely,

W. Joseph Isaacs
Legal Assistant

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