



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 4, 1998

Randy M. Blackmon, Chief of Police
Columbia Metropolitan Airport
P. O. Box 280037
Columbia, South Carolina 29228-0037

Re: Informal Opinion

Dear Chief Blackmon:

You reference a recent amendment to S.C. Code Ann. Sec. 55-11-350. Such provision relates to the authority of Richland-Lexington Airport Commission with respect to the roads and streets upon its properties. Prior to the amendment, § 55-11-350 provided in pertinent part as follows:

[t]he Richland-Lexington Airport Commission is authorized to adopt and promulgate rules and regulations governing the use of roads, streets and parking facilities upon the lands of the Richland-Lexington Airport Commission. Such rules and regulations shall not be in conflict with any State law and all State laws are hereby declared to be applicable to the roads, streets and parking facilities under the control of the Commission. The rules and regulations authorized herein shall be effective when filed with the Director of the Columbia Metropolitan Airport and in accordance with § 1-1-210.

The recent amendment added the following paragraph:

[n]otwithstanding the provisions of this section, any public road, street, or highway located in the Richland-Lexington Airport District which is contiguous to or intersects the corporate limits of a municipality is within the police

jurisdiction of that municipality. Summonses issued by municipal police officers in the jurisdiction authorized pursuant to this paragraph must be tried in municipal court, and all fines and forfeitures collected under the provisions of this paragraph may be retained by the enforcing municipality.

Thus, the question you present is what is the meaning of "public road, street or highway" for purposes of the amendment.

Law / Analysis

A number of principles of statutory construction are relevant here. The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. Bankers Trust of S.C. v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). The interpretation of statutes according to the natural and obvious signification of the wording without resort to subtle and refined construction for the purpose of either limiting or extending their operation is favored. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). A statute must, unless otherwise indicated, be construed in accord with the plain and ordinary meaning of the words used therein. Smith v. Eagle Const. Co., 282 S.C. 140, 318 S.E.2d 8 (1984).

A "public road" is generally defined as

[a] highway, a road or way established and adopted (or accepted as a dedication) by the proper authorities for the use of the general public, and over which every person has a right to pass and to use it for all purposes of travel or transportation to which it is adapted and devoted. The proper test in determining whether [a] road is a 'public' or 'private road' is use to which such roadway is put, and [the] fact that [the] road has been constructed at public expense is not conclusive.

Black's Law Dictionary, 1329 (6th ed. 1990).

This Office has commented extensively upon the general distinctions between a "public road" and a "private" road in an Opinion, dated June 17, 1975. There, we set forth the following analysis concerning this question:

"... a way established and adopted by proper authority for the use of the public, which every person has a right to use for all purposes of travel or transportation to which it is adopted and devoted, and over which he has a right to pass. Whether a road is public depends in a measure on the particular facts. Thus it must, of physical necessity be so situate and connected as to be accessible to the public, but it does not depend on its length, or on the place to which it leads, or on the number of people who use it. It is enough if its use is free and common to all citizens, and that the public has actual access to it, whether by a mere neighborhood or settlement road, or by some established public highway. It is immaterial that one person may be most benefited by it. 39 C.J.S., 'Highways' Section 1 at 918-919.

The 1975 Opinion went on to describe and elaborate upon the methods for creating a public way or road. It was stated that

[o]ther than being established by statute or statutory proceeding, a public way or road can be established by prescription. By continuous adverse use for twenty (20) years, the public can acquire a prescriptive right to a certain road over any land which is subject to the state's right to layout a road over it. State v. Washington, 80 S.C. 376, 379, 61 S.E. 896 (1908); see also: State v. Allen, 107 S.C. 133, 92 S.E. 193 (1916); State v. Rodman, 86 S.E. 155, 68 S.E. 343 (1910). Permissive use of a road does not convert it into a public highway. Fanning v. Stroman, 113 S.C. 495, 498, 101 S.E. 861 (1919). In discussing the type use the public acquires by prescription, the Supreme Court has stated:

If the adverse use on which the prescriptive claim to a way is based was for one particular purpose only, as in the case of a way used by foot passage only, or for the carriage of timber only, this is not sufficient to support a claim to a right of way for all purposes. Bussell v. Kirkland, 242 S.C. 201, 207, 130 S.E.2d 470 (1963).

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Furthermore, the '... route must be used by the public generally and not by particular individuals. In other words, the use must not be by a limited community or class of people. Craft v. Seaboard Airlines Railway, 92 S.C. 291, 75 S.E. 501.' Bussell, supra 208. Finally, on numerous occasions, the State Supreme Court has held that the termini of a road must be in a public highway or public place in order for the road in question to be public. Bussell, supra; State v. Dodenhoff, 153 S.C. 7, 150 S.E. 315 (1929); Fanning, supra.

Although the courts have established the basic guidelines as to whether or not a road is public or private, the ultimate determination of whether a public road exists by prescription is primarily one of fact for a jury. 39 C.J.S., 'Highways' Section 24 at 945.

Accordingly, the question of whether a particular road is a "public" road, street or highway is ultimately a factual one. However, based upon the foregoing authorities, it is my opinion that a court would construe the word "public" broadly, and not in any technical sense, in accordance with the foregoing authorities. Compare, § 57-17-10 [all roads, highways and ferries that have been laid out or appointed by virtue of an act of the General Assembly, an order of court or an order of the governing body of the county are declared to be public roads and ferries] In other words, a court would most probably view public access as the key element for determining whether a road is "public" for purposes of § 55-11-350.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an