

The State of South Carolina

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Office of the Attorney General

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August 10, 1987

The Honorable Ryan C. Shealy
Member, South Carolina Senate
Post Office Box 966
Lexington, South Carolina 29072

Dear Senator Shealy:

Attorney General Medlock has asked me to respond to your letter of July 15, 1987. You have asked "whether the Highway Department would have the right to refuse [an] encroachment."

The only statutory or regulatory provision I have found which addresses encroachment permits is S.C. Code Ann. §57-5-600 (1976). That section provides in pertinent part:

Whenever the State Highway Department shall determine that any property previously acquired for right-of-way is not required for either right-of-way or departmental purposes, it may ... may grant written permits to encroach thereon under such rules and regulations as the Highway Department may establish. (emphasis added)

The Department of Highways and Public Transportation (hereinafter "Department") has not promulgated regulations regarding encroachments. There may be customs or rules within the Department as to encroachments ^{1/}. Section 57-5-600 clearly allows the Department to "establish" those rules.

^{1/} You should consult the Department for an interpretation of its in-house rules and customs as to encroachment permits.

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I have enclosed two earlier Opinions of this Office regarding encroachment permits. See, Ops. S.C. Atty. Gen. September 10, 1980 and June 12, 1980. These Opinions address certain of the concerns raised in your July 15 letter. Without duplicating the research or analysis of those Opinions, I note that they recognize that the Department should regulate "encroachments through the use of its encroachment permits in order to protect the rights of the public." Op. S.C. Atty. Gen. June 12, 1980.

Thus, it appears that the Department has the discretion to grant encroachment permits consistent with §57-5-600 and its own rules, regulations and customs. This discretion would seem to authorize the Department to reject an encroachment. 2/

In your letter you allude to certain factors which you argue mitigate against "the use of Citadel Drive as a beltline." 3/ Obviously, the question of whether an encroachment permit should issue is initially a question for the Department of Highways and Public Transportation. The Department will ascertain the facts the Department feels are relevant and then will apply its rules, regulations and practices. This Office is neither authorized nor empowered to make factual determinations. 4/ Thus, you should discuss directly with the Department the wisdom of granting any specific encroachment permit.

2/ Note Op. S.C. Atty. Gen. August 25, 1969 (a copy of which is enclosed) which discusses a legal, as distinguished from factual, basis to deny an application for an encroachment permit.

3/ The issuance of an encroachment permit is not the equivalent of accepting a road into the State Highway System. An encroachment, as utilized in §57-5-600, is simply a restriction on a right-of-way.

4/ The scope of an Attorney General's opinion is to address questions of law rather than investigations of fact. Ops. S.C. Atty. Gen. April 5, 1984, and December 12, 1983.

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I hope the above has been of assistance to you in resolving your question.

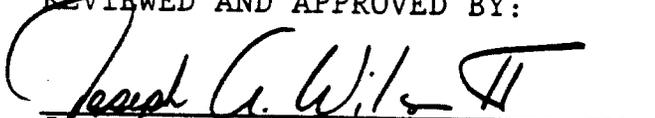
Sincerely yours,



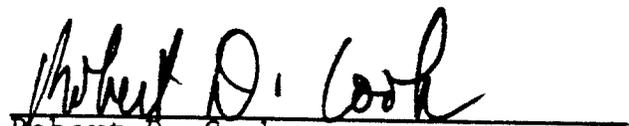
Charles W. Gambrell, Jr.
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CWGjr:bvc
Enclosures

REVIEWED AND APPROVED BY:



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