

1977 S.C. Op. Atty. Gen. 35 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 7732, 1977 WL 24375

Office of the Attorney General

State of South Carolina

Opinion No. 77-32

January 26, 1977

\*1 Pursuant to §§ 58–771, *et seq.* CODE OF LAWS OF SOUTH CAROLINA (1962), the Seaboard Coast Line Railroad may condemn lands in this State for the purpose of constructing railroads.

TO: Mr. Robert E. Leeke  
Executive Director  
State Development Board

QUESTION PRESENTED:

Does the Seaboard Coast Line Railroad have the statutory authority to condemn land for the purpose of constructing railroads in South Carolina?

AUTHORITIES:

Article IX, § 1;

§§ 58–771, *et seq.*, CODE OF LAWS OF SOUTH CAROLINA (1962);

[Seaboard Coast Line Railroad v. Harrelson](#), 262 S.C. 38, 202 S.E.2d 1 (1974);

[Beeker v. Atlantic Coastline R. Co.](#), 128 S. C. 131, 121 S.E. 416 (1924);

[Atlantic Coastline R. Co. v. South Bound R. Co.](#), 57 S.C. 317, 35 S. E. 553 (1900).

DISCUSSION:

Article IX, Section 1 of the Constitution of South Carolina (cum.supp.) provides:

The General Assembly shall provide for appropriate regulation of common carries, publicly owned utilities and privately owned utilities serving the public as and to the extent required by the public interest.

Pursuant to this provision, the General Assembly has enacted legislation authorizing persons chartered to construct railroads in this State to condemn land for construction purposes.

Whenever any person shall be authorized by charter to construct a railway, including a railway operated by electricity or any other motive power, or canal in this State, such person or corporation, before entering upon any lands for the purpose of construction, shall give the owner thereof, if he be sui juris, notice, in writing, that a right of way over such lands is required for such purpose. Such notice shall be given at least thirty days before entering upon such lands and shall be served upon such owner in the same manner as required by law for the service of a summons in civil actions.

The constitutionality of this Section and the ones following it setting forth the condemnation procedure to be followed have been tested and upheld on numerous occasions. See: [Atlantic Coastline R. Co. v. South Bound R. Co.](#), 57 S.C. 317, 35 S.E. 553 (1900); [Beeker v. Atlantic Coastline R. Co.](#), 128 S. C. 131, 121 S.E. 476 (1924). According to the Secretary of State's Office, the Seaboard Coast Line Railroad Company is chartered in South Carolina to operate a railroad.

CONCLUSION:

Since the Seaboard Coast Line is chartered in South Carolina to operate a railroad in South Carolina, as long as the Company follows the procedures set forth in §§ 58–771, *et seq.*, it may condemn land for the purpose of constructing a railroad or a spur which would be a part of an existing railroad network. [Seaboard Coast Line Railroad v. Harrelson](#), 262 S.C. 38, 202 S.E.2d 1 (1974).

M. Elizabeth Crum  
Assistant Attorney General

**A BILL**

TO REPEAL SECTIONS 53–351 THROUGH 53–707, CODE OF LAWS OF SOUTH CAROLINA, 1962, AS AMENDED, RELATING TO RURAL AND OTHER COUNTY POLICE; AND TO PROVIDE FOR THE POWERS AND DUTIES OF COUNTY SHERIFFS IN THOSE COUNTIES WHEREIN SUCH RURAL OR OTHER COUNTY POLICE PRESENTLY OPERATE.

\*2 Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Repeal.—Effective July 1, 1977, Sections 53–351 through 53–707 of the 1962 Code, as amended, are hereby repealed.

SECTION 2. Powers and duties of county sheriffs after July 1, 1977.—Effective July 1, 1977, the sheriff of any county in which a rural or other county police theretofore been operating will become vested with the powers and duties previously possessed by that rural or other county police in addition to those powers and duties already possessed by that county sheriff.

SECTION 3. Time effective.—This act shall take effect upon approval by the Governor.

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