

1977 WL 37418 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 9, 1977

***1 In Re: Elimination of Grade Crossings in and near the City of Greenwood**

Honorable William K. Charles
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Honorable G. P. Callison
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Gentlemen:

You have requested the opinion of this Office on the following questions:

Question No. 1

May the City of Greenwood contract with a contractor or contractors for building a segment of railroad track or making improvements on other portions of the Southern Railway track as part of the elimination of grade crossings in and near the City of Greenwood?

May the County of Greenwood undertake the same contractual arrangements?

For a number of years, the City of Greenwood and the County of Greenwood have been cooperative in an effort to eliminate dangerous grade crossings of railroads in the City of Greenwood and adjacent thereto. At present, the lines of the Southern Railway bisect the City in its central business area, crossing many thoroughfares at grade. The desire to eliminate these grade crossings prompted the institution of a pilot project by former Congressman Bryan Dorn, whereby costs of elimination of such grade crossings were to be borne by the Department of Transportation (80%), the State Highway Department (10%), and the City and County of Greenwood and private sources (10%). The complete project envisioned the removal of the tracks of Southern Railway and Seaboard Coastline from the downtown area of the City of Greenwood. The Seaboard Coastline Railway tracks have been eliminated from the downtown area and the relocation of the Southern tracks remains to be accomplished.

It is proposed that the present Southern Railway tracks be connected to the Railway's existing line at a point approximately two miles southeast of Greenwood; from such point, a new track is to be laid in a southwesterly direction to a connection with the tracks of the Georgia and Florida Railroad which, following its rehabilitation after a prolonged period of disuse, is to carry Southern traffic from a point south of the City of Greenwood to the Seaboard Coastline Yard in Greenwood. From this point, tracks are to be laid parallel to the Piedmont and Northern Railway in a northeasterly direction. The net affect of the project will be to completely remove the grade crossings from the congested downtown area of the City of Greenwood and to re-establish

the line in a general are around the City. In the process of removing the present Southern tracks, 27 grade crossings appear to be involved, of which 10 will be eliminated, each of those 10 being in the State Highway System. The remaining grade crossings to be eliminated transverse either County highways or City streets. This information is derived from plat submitted to the South Carolina State Highway Department by Davis & Floyd, Engineers, Inc., dated November 1, 1967.

*2 So far as I am advised, no benefit would accrue to the railroad from such relocation of its tracks, with the possible exception of the reduction in costs which would ensue by reason of the removal of the need for grade crossing safety devices and the lessening of the possibility of accidents occurring at such crossings. This benefit, in my opinion, is far outweighed by the benefits which would accrue to the public generally from the elimination of grade crossing hazards. Recognition of the public purpose served by the removal of such hazards seems implicit by the provisions of Article VIII, Section 7(47) of the former Constitution of this State which increased the bonded debt limitation for the City of Greenwood if the proceeds of bonds were used for the cost of ‘improving traffic conditions in said City by the relocation of all or parts of the railroad tracks in said City, said City being specifically authorized to provide new rights or way for the railroads whose tracks may be relocated—.’ See also, Sections 58-15-1610, et seq., Code of Laws, 1976, providing for the mandatory removal of grade crossings in certain instances by political subdivisions of the State.

It seems abundantly clear to me that the grade elimination project here involved serves a public purpose. Citizens of Greenwood County naturally have frequent occasion to visit the City of Greenwood and to cross the railroad tracks running through its central portion, commonly denominated as City Square, and other portions of the City; it is the County Seat and the largest city within the County; the County Courthouse is located in the vicinity of the grade crossings which are sought to be eliminated; the central shopping area of the City, with its principal banks and office buildings, is located adjacent to the present tracks; and a large modern hospital is located in the City drawing traffic from throughout the County and the surrounding region.

The public purpose to be subserved by the elimination of the grade crossings involved, in my opinion, warrants the expenditure of funds for the purposes sought and would authorize the County of Greenwood to enter into contracts for the performance of the work. It appears authorized by Section 4-9-30(5), 1976 Code of Laws, which is a part of the Home Rule Act, and which specifically authorizes counties to make appropriations for many purposes, among which are ‘public works, including transportation—public safety.’

In my opinion, each of these entities could undertake the work alone and there is nothing which prohibits cooperation between two governmental entities to achieve such a joint purpose. Smith v. Robertson, 210 S.C. 99, 41 S.E.2d 631; see also, S. C. CONST. art. VIII, § 13.

Question No. 2

May the City and County of Greenwood enter into such contracts and may then enter into such contracts along with the State Highway Department as one of the contracting parties?

The answer to this is in the affirmative (see above). In my opinion, the State Highway Department similarly has such authority under its general contractual powers (Section 57-3-620, Code of Laws, 1976, and Sections 57-5-10, et seq., which authorize the Department to construct and maintain State highways in a safe and serviceable condition). Of interest also is Section 57-5-1640 which authorizes the Department to enter into contracts with railroad companies for the establishment of grade separation crossings.

*3 I therefore advise that, in my opinion, the answers to the questions posed by you are in the affirmative.

Very truly yours,

Daniel R. McLeod

Attorney General

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