

1976 S.C. Op. Att'y. Gen. 162 (S.C.A.G.), 1976 S.C. Op. Att'y. Gen. No. 4338, 1976 WL 22957

Office of the Attorney General

State of South Carolina

Opinion No. 4338

April 23, 1976

\*1 South Carolina law allows the Highway Department to do only those acts mandated by federal law in order to receive federal reimbursement. Since the purchase, construction or leasing of housing of last resort is not a prerequisite to federal aid, the Department would have no authority to take such action under existing state statutes. Therefore the Department cannot by agreement, purchase, or condemnation, own or otherwise control living units used by persons displaced by right of way acquisition.

TO: S. N. Pearman,  
Chief Highway Commissioner

QUESTION PRESENTED:

Can the South Carolina Highway Department participate in federal reimbursed housing of last resort programs?

STATUTES, CASES, ETC:

Code of laws of South Carolina, 1962, Section 33–21, and Section 25–181, as amended;

Public Law 91–646, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

[Southern Railroad v. S.C.S.H.D.](#), 237 S. C. 75, 115 S. E. 2d 685;

[Riley v. S. C. S. H. D.](#), 238 S. C. 19, 118 S. E. 2d 809.

DISCUSSION OF ISSUES:

The question has been presented whether the South Carolina State Highway Department can participate in Housing of Last Resort Programs, in conjunction with right of way acquisition where federal reimbursement is made.

A 1968 Attorney General's Opinion, (Copy attached), advised that South Carolina Constitutional provisions and related implementing statutes govern the extent to which the Highway Department may make payments for right of way acquisitions and related relocation expenses. In effect, the 1968 Opinion advised that only those expenditures authorized by statute can be made, regardless of whether federal participation may be available.

In 1972, Code Section 25–181, et seq., was enacted, to allow the Highway Department to comply with the provisions of Public Law 91–646, which in turn provides relocation assistance for federal and federally related real property acquisitions.

To the extent that Public Law 91–946 makes relocation payments and assistance by states a prerequisite to federal aid to states in projects involving real property acquisitions, Section 25–181 empowers a participating state agency to expend available public funds for such purposes. The intent of the statute is to give the Highway Department sufficient authority

to comply with Public Law 91–646, in order to be eligible for maximum available federal participation in relocation and right of way acquisition costs.

The standards or prerequisites for the federal aid are set out in Section 210 of P. L. 91–646. Four sections of the federal act must be complied with, namely sections 202, 203, 204 and 205. These four sections cover relocation payments, advisory services and moving expenses. Interestingly enough, Section 206, which specifically covers housing of last resort, is not a section with which a state agency must comply before receiving federal funds. Section 206 authorizes a federal agency to take whatever action is necessary to provide suitable housing where such is not currently available.

\*2 It should be noted that the South Carolina Highway Department is an agency of statutory creation and its powers are derived from the legislature and are not inherent powers. Hence whatever powers the Department attempts to exercise must be found in some act of the legislature. See Code Laws of South Carolina, 1962, Section 33–21; also [Southern Railroad v. S. C. S. H. D.](#), 237 S. C. 75, 115 S. E. 2d 685, and [Riley v. S. C. S. H. D.](#), 238 S. C. 19, 118 S. E. 2d 809.

#### CONCLUSION:

It is my opinion that the South Carolina law allows the Highway Department to do only those acts mandated by Section 210 of P. L. 91–646 in order to receive federal reimbursement for projects involving real property acquisitions. Since the purchase, construction or leasing of housing of last resort is not a Section 210 prerequisite to federal aid, the Department would have no authority to take such action under existing state statutes. Therefore the Department cannot by agreement, purchase or condemnation, own or otherwise control living units used by persons displaced by right of way acquisition.

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