1976 S.C. Op. Atty. Gen. 183 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4352, 1976 WL 22971

Office of the Attorney General

State of South Carolina
Opinion No. 4352
May 14, 1976

***1** Representative James B. Van Osdell
P. O. Box 1101
Myrtle Beach, South Carolina 29577

Dear Representative Van Osdell:
You have requested an opinion from this Office as to two questions:
1. Can a municipality have all roads within its limits considered private?

2. What is the effect of the incorporation of Briarcliff Acres on the status of the roads which had previously been privately owned with an easement to the Association?

As your letter relates the pertinent facts, Briarcliff Acres Association, a private, eleemosynary corporation, owns in perpetuity a nonrevocable easement to manage and control the common areas, including the roads, of Briarcliff Acres. Those roads have been maintained as private roads and are not open to the public. The Secretary of State has recently issued a certificate of incorporation to Briarcliff Acres, which action is presently being challenged in a lawsuit entitled Kalk v. Thornton, et al. (amended complaint filed April 27, 1976, Court of Common Pleas of Horry County, South Carolina).

Authorities do not seem to consider the existence of public streets to be an element necessary to constitute a municipality. See, 1 McQUILLIN, MUNICIPAL CORPORATIONS § 2.076 at 139. Assuming that the streets of Briarcliff Acres have not heretofore been dedicated to the public but instead have been maintained as private roads, they will not become so dedicated automatically by the incorporation of Briarcliff Acres. Cf., 10 McQUILLIN, MUNICIPAL CORPORATIONS § 30.21 at 656; see also, 64 C.J.S. Municipal Corporations § 1657 at 27. It may be, however, that they will be imbued with such a public nature that they must be open to use by the public. In Marsh v. Alabama, 326 U.S. 501, 90 L.Ed.2d 265, 66 S.Ct. 276 (1946), the United States Supreme Court held that the constitutional guaranties of freedom of the press and of religion precluded the enforcement of a state statute making it a crime to enter or remain on the premises of another after having been warned not to do so against a person who attempted to distribute religious literature on the street of a company-owned town. Mr. Justice Frankfurter, in a concurring opinion, wrote:
A company-owned town gives rise to a network of property relations. . . . But a company-owned town is a town. In its community aspects it does not differ from other towns. . . . Title to property as defined by State law controls property relations; it cannot control issues of civil liberties which arise precisely because a company town is a town as well as a congeries of property relations. And similarly the technical distinctions on which a finding of 'trespass' so often depends are too tenuous to control decision regarding the scope of the vital liberties guaranteed by the Constitution. 90 L.Ed.2d at 271.

With kindest personal regards,

Karen LeCraft Henderson
Assistant Attorney General

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