

1976 WL 30767 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 9, 1976

*1 G. P. Callison, Esquire
Callison and Dorn
Post Office Box 1115
Greenwood, SC 29646

Dear Mr. Callison:

Attorney General McLeod has referred your letters concerning the relocation of railroad tracks in Greenwood to me. You have asked whether the City of Greenwood would have the power of eminent domain for purposes of acquiring rights of way to be used by a railroad in a track relocation program. Pursuant to an agreement between the railroad, the United States, and the city, county, and state, the project will be financed by federal grant funds.

Section 47-34, South Carolina Code (Supp. 1976) provides in part that:

Any municipality desiring to become the owner of any land or to acquire any easement or right-of-way therein for any authorized corporate or public purpose shall have the right to condemn such land or right of way or easement, subject to the general law of this State, within and without the corporate limits in the county in which it is situated and in any adjoining county or counties. This authority shall not apply to any property devoted to public use . . .

It is well settled that the acquisition of property by a municipality for the purpose of relocating a railroad constitutes a public purpose where the property of the railroad has been taken for public use; see 11 McQuillin, Municipal Corporations, § 32.58. There is thus no question that the acquisition of the property in question by the city pursuant to § 47.34 is permissible. Needless to say, the city cannot acquire the property already used for highway purposes at such places where the new railway line will cross existing streets or highways; see, e.g., §§ 58-841 et seq., which provide for other procedures in such situations.

If I can be of further help to you, please let me know.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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