

1976 S.C. Op. Atty. Gen. 222 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4387, 1976 WL 23005

Office of the Attorney General

State of South Carolina

Opinion No. 4387

July 6, 1976

\*1 Ney B. Steele, Esquire  
Attorney at Law  
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Chesterfield, South Carolina 29709

Dear Mr. Steele:

Your letter concerning the power of eminent domain in Chesterfield County has been forwarded to me by the Attorney General for reply.

As you correctly note, Chesterfield County is exempt from the Public Works Eminent Domain Act under § 25–139. This Act provided authority, delegated by the State, to the counties not excluded by § 25–139 to exercise eminent domain power. As Chesterfield is exempted, Chesterfield would have no power of eminent domain at least prior to July 1, 1976.

As of July 1, 1976, and upon the necessary approval of the county form of government by the Justice Department, Chapter 63 of Title 14 of the South Carolina Code, the Home Rule Amendment, goes into effect. Under this Amendment, the powers of the governing body of the county, as delegated by the State, are set forth in § 14–3703.

Under § 14–3703(4) a county governing body is authorized

To exercise powers of eminent domain for county purposes except where the land concerned is devoted to a public use; provided, however, the property for corporations not for profit organized under the provisions of Act 1030 of 1964 [§§ 12–771 to 12–784] shall not be subject to condemnation unless the county in which their service area is located intends to make comparable water service available in such service area and such condemnation is for that purpose. After any such condemnation, the county shall assume all obligations of the corporation related to the property and the facilities thereon which were condemned.

Thus it appears that Chesterfield would, after July 1, and upon approval of the form of government by the Justice Department, be able to exercise the power of eminent domain granted it by the State under § 14–3703(4). It must be remembered that the Home Rule Amendment doesn't become effective until the Justice Department has given its approval.

The question then arises as to whether Chesterfield County would be bound by the procedures set forth in §§ 25–101 to 25–140. Since special acts passed by the General Assembly prior to the 1973 Amendment, Article VIII, Section 7, remain valid after that amendment, it would follow that Chesterfield's exemption from the procedures laid down in §§ 25–101 to 25–140 would still be valid and not binding on your county. However, a caveat must be left open that, by passing § 14–3703(4), the General Assembly may have repealed § 25–139 by implication and thus bound Chesterfield by the procedure outlined in that chapter. The question of whether a special act can be repealed by the General Assembly, either by implication or outright, without it being a special act itself is one that can only be settled by adjudication by the courts.

Best wishes,

C. Tolbert Goolsby, Jr.

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