



ALAN WILSON
ATTORNEY GENERAL

August 1, 2024

William H. Johnson, Esq.
Johnson DuRant, LLC
Post Office Box 137
Manning, South Carolina 29102

Dear Mr. Johnson:

We understand you are the town attorney for the Town of Santee (the "Town") and wish to request an attorney general's opinion on behalf of the Town. In your letter you state:

The Town has been presented with a request to accept dedication of certain roads located within a newly developed subdivision, citing S.C. Code Ann. Sec. 5-27-110. Council has requested an opinion from your office clarifying the application of the section. The Town does not have the resources to maintain roads.

The questions include:

- 1) Does S.C. Code Ann. Sec. 5-27-10 apply to the Town of Santee, which has no capability to maintain roads?
- 2) Who has standing to enforce the statute?
- 3) What are the considerations of the enforcement of the statute if the costs of compliance exceed the ability of the Town to levy and collect revenue?

Law/Analysis

Section 5-27-10 of the South Carolina Code (2004) states as follows:

Whenever the mayor and aldermen of any city or the intendant and wardens of any town in this State shall think it expedient to widen, open, lay out, extend or establish any street, alley, road, court or lane, they may purchase the lot, lots or parts of lots of land necessary for such street, alley, road, court or lane, and the fee simple of such land shall be vested in such city or town for the use of the public from the day of delivery of the deed of sale.

This provision gives municipalities specific authority to purchase land for the establishment or improvement of roads and streets within its corporate boundaries. Therefore, the Town has

authority to acquire property for streets and roads for public use, but we did not find any indication in section 5-27-10 of the Legislature's intent to require a municipality to acquire certain roads. Additionally, our courts recognize the public is not compelled to assume the burdens imposed by accepting an offered dedication. Corbin v. Cherokee Realty Co., 229 S.C. 16, 25, 91 S.E.2d 542, 546 (1956); As we stated in a 1973 opinion, "the law in this state is beyond cavil that the county is not required to accept dedication of a private road and can reject dedication as it so desires." Op. Att'y Gen., 1973 WL 27677 (S.C.A.G. Mar. 9, 1973). We believe the same is true for municipalities. Thus, the Town has discretion as to whether to accept the proposed dedication.

In your letter, you also mention section 5-27-110 of the South Carolina Code (2004). This provision states:

Every town council of a town of less than one thousand inhabitants shall keep all streets and ways which may be necessary for public use within the limits of the town open and in good repair and for that purpose they are hereby invested with the powers, rights and privileges granted by law to the governing body of the county without the limits of the town. For neglect of duty they shall be liable to the pains and penalties imposed by § 57-17-80 upon governing bodies of counties for like neglect.

S.C. Code Ann. § 5-27-110. This statute only applies to towns with less than one thousand inhabitants. According to data from the 2020 census, the Town's population is 797. Therefore, presumably this provision is applicable to the Town.

While we did not find any case law or prior opinions interpreting section 5-27-110, we discussed a similar provision, section 5-27-120 of the South Carolina Code, in a 2016 opinion. Op. Att'y Gen., 2016 WL 7031993 (S.C.A.G. Nov. 15, 2016). Section 5-27-120 applies to municipalities with populations greater than one thousand residents and provides:

The city or town council of any city or town of over one thousand inhabitants shall keep in good repair all the streets, ways and bridges within the limits of the city or town and for such purpose it is invested with all the powers, rights and privileges within the limits of such city or town that are given to the governing bodies of the several counties of this State as to the public roads.

S.C. Code Ann. § 5-27-120. Our 2016 opinion stated the language in this statute "is plain and clear that municipal councils in municipalities having a population greater than 1000 shall repair the streets within the municipal limits." Op. Att'y Gen., 2016 WL 7031993 (S.C.A.G. Nov. 15, 2016) (emphasis in original). We continued by stating: "The court in Vaughan v. Town of Lyman, 370 S.C. 436, 635 S.E.2d 631 (2006), agrees with this conclusion, stating that section 5-27-120 'clearly defines the duty to the general public of a municipality to maintain its streets.'" Id. Based on the similar language in sections 5-27-110 and 5-27-120, we believe a court would conclude section 5-27-110 requires municipalities with less than one thousand residents to keep the streets

necessary for public use within its corporate limits open and in good repair. As such, if the Town were to accept the proposed dedication, we believe it is responsible for keeping the roads subject to the dedication open and in good repair.

You also question who has standing to enforce section 5-27-110. Section 5-27-110 mandates municipalities that neglect their duty to keep their roads open and in good repair “shall be liable to the pains and penalties imposed by § 57-17-80” on county governing bodies. Section 57-17-80 of the South Carolina Code (2018) states:

If the members of the governing body of any county neglect to have repaired any of the highways and bridges which by law are required to be kept in repair, they shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in a sum of not less than one hundred nor more than five hundred dollars, in the discretion of the court.

Thus, the Legislature established a criminal penalty for violating section 5-27-110. As we stated in a 2014 opinion, it is a “long-standing rule of law that the decision of whether or not to bring a criminal case to trial in this State rests almost exclusively with the prosecutor.” Op. Att’y Gen., 2014 WL 3752137 (S.C.A.G. July 14, 2014). The United States Supreme Court in Leeke v. Timmerman, 454 U.S. 83, 87, 102 S. Ct. 69, 71, 70 L. Ed. 2d 65 (1981) found inmates lacked standing to challenge the efforts of state prison officials to block the prosecution of prison guards accused of assaulting prisoners, as the decision to prosecute is solely within the discretion of the prosecutor. Therefore, we believe it would be up to the Town’s prosecuting authority or possibly the solicitor to enforce the requirements set forth under section 5-27-110.

Regarding potential civil liability, we note the absence of an express private right of action for the enforcement of section 5-27-110. “Where a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party.” Adkins v. S.C. Dep’t of Corr., 360 S.C. 413, 418, 602 S.E.2d 51, 54 (2004). As mentioned above, our Supreme Court in Vaughan, 370 S.C. 436, 635 S.E.2d 631, stated section 5-27-120 created a duty to the general public. Moreover, that Court went on to conclude: “This Court continues to acknowledge the duty of a municipality to maintain its streets; however, we no longer observe the statutory basis for a private right of action. Instead, liability is now imposed through the waiver provisions of the Tort Claims Act. See S.C. Code Ann. § 15-78-10, et seq. (2005).” Id. at 442, 635 S.E.2d at 635 (2006). We believe a court would similarly find section 5-27-110 created a duty to the general public rather than a special benefit to a private party. Therefore, we do not believe the Legislature intended to create a private right of action giving individuals standing to bring civil suits against the Town for violations of section 5-27-110. However, a court could also find, as did the Supreme Court in Vaughan, that the Town could be held liable under the Tort Claims Act.

Lastly, you ask about what may be considered in enforcing the requirements under section 5-27-110 and whether the Town’s inability to pay for maintenance and repairs may excuse compliance.


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“The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature.” Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (citation omitted). The plain language of a statute is the best evidence of the Legislature’s intent. Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 538, 725 S.E.2d 693, 697 (2012). “Ordinarily, the use of the word “shall” in a statute means that the action referred to is mandatory.” S.C. Dep’t of Highways & Pub. Transp. v. Dickinson, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986) (citation omitted). Based on the plain language in section 5-27-110, it mandates municipalities keep roads open and in good repair. It does not mention consideration of the cost of compliance or excuse compliance due to costs. Moreover, section 57-17-80, enforcing this requirement, similarly does not mention costs or excuse compliance due to costs. Therefore, we do not believe a court would be at liberty to read such exceptions into the law. Fort Hill Nat. Gas Auth. v. City of Easley, 310 S.C. 346, 349, 426 S.E.2d 787, 788-89 (1993) (stating a court cannot add words to a statute which would give it a different meaning). If the Town is concerned with the ability to repair and maintain the roads in the proposed dedication, it should consider this in determining whether to accept the dedication.

Conclusion

While section 5-27-110 of the South Carolina Code allows a municipality to purchase property for the purpose of establishing or improving its streets and roads, we do not find this statute requires such a purchase. Moreover, the Town’s decision to accept the dedication of certain roads as public roads is within the discretion of the Town’s governing body. However, if the Town chooses to accept the dedication, we believe section 5-27-110 requires it to keep the roads open and in good repair. In addition, this statute does not appear to provide an exception due to a town’s inability to pay. If the Town fails to maintain its roads in accordance with section 5-27-110, the Town may be subject to the criminal penalties provided under section 57-17-80. Whether or not the Town is charged pursuant to section 57-17-80 is a matter of discretion by the Town’s prosecuting authority. However, we do not believe this provision provides a private right of action for failing to comply with section 5-27-110.

Sincerely,


Cydney Milling
Assistant Attorney General

William H. Johnson, Esq.

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REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a horizontal line.

Robert D. Cook
Solicitor General