

1972 WL 25320 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 19, 1972

*1 The Honorable Charles E. Hodges
Member
House of Representatives
4307 Broad Street
Loris, South Carolina 29569

Dear Mr. Hodges:

Thank you for your letter of recent date inquiring as to whether or not a canal constructed by the Corps of Engineers over property of Mr. Floyd Worley is open to the public.

An easement for the construction of the canal was apparently executed by Mr. Worley for the purpose of constructing and maintaining a canal and for flood control and drainage within the confines of Mr. Worley's property, which apparently lies on the Mumber River.

I doubt seriously if the public has the right to enter the canal but I am, frankly, unable to state this with absolute confidence. This is because of the uncertainty of the law with respect to artificially constructed channels. I note that the easement retains in Mr. Worley 'the absolute and complete use of the lateral area and the canal' and gives to the Corps of Engineers the right to use such area solely and only for the purpose of constructing the said canal.' The precise location of the canal is not known to me, but I assume that it leads into the Lumber River.

In my opinion, this matter can be resolved only by resort to the courts for an adjudication as to whether the public has the right of entry into an artificially constructed canal which leads off of and into a navigable stream.

Cordially yours,

Daniel R. McLeod
Attorney General

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