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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

August 24, 2004

The Honorable Catherine C. Ceips
Member, House of Representatives
1207 Bay Street
Beaufort, South Carolina 29902

Dear Representative Ceips:

In a letter to this office you forwarded an inquiry by Mr. Thomas Logan with regard to the Port Royal Railroad right of way. He indicates that Beaufort County has entered into negotiations with the State Ports Authority to purchase a railroad right of way. Mr. Logan has raised questions concerning possible violations of the State Ethics Act with regard to activity by Beaufort County. He also raises the question of what happens to a railroad right of way once the right of way ceases to function as a railway. In such circumstances, he asks whether the right of way reverts back to the original adjacent landowners.

With regard to possible violations of the State Ethics Act, S.C. Code Ann. Sections 8-13-100 et seq. (Supp. 2003), such matters are within the jurisdiction of the State Ethics Commission. Pursuant to Section 8-13-320 (9), the Commission is authorized "to initiate or receive complaints and make investigations" of alleged violations of the State Ethics Act. Furthermore, pursuant to Section 8-13-320 (11), the State Ethics Commission is authorized to issue advisory opinions construing the Ethics Act. Therefore, the Ethics Commission is the appropriate body to construe possible violations of the Ethics Act.

Admittedly, courts have concluded that a railroad easement can be abandoned. Saluda Motor Lines, Inc. v. Crouch, 300 S.C. 43, 386 S.E.2d 290 (Ct.App. 1989). However, courts have also held that the mere nonuse does not constitute abandonment in that the matter of abandonment depends on the facts and circumstances. Lorick and Lowrance, Inc. v. Southern Railway Company, 87 S.C. 71, 68 S.E. 931 (1910). As a result, a court must generally make a determination of the issue of abandonment of an easement. Therefore, with regard to the question regarding the status of the railroad right of way, a complete review of all the facts involved here would be needed to make a determination as to your question. Such is beyond the province of this office in the issuance of an opinion in that this office has

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repeatedly stated that an opinion of the Attorney General cannot determine facts or resolve factual issues. Op. Atty. Gen. dated December 12, 1983. As a result, as to the questions relating to what happens to the railroad right of way referenced in your letter, only a court may satisfactorily resolve such issue.

I regret that we cannot be of more assistance at this time.


Sincerely,



Charles H. Richardson

Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook

Assistant Deputy Attorney General