



HENRY McMASTER
ATTORNEY GENERAL

November 5, 2008

The Honorable William H. O'Dell
Senator, District No. 4
Box 540
Ware Shoals, South Carolina 29692

Dear Senator O'Dell:

In a letter to this office you requested an opinion regarding the closure of a portion of Lewis Drive in Anderson County.

Enclosed with your request was a copy of a resolution by the Anderson County Council entitled:

A Resolution Expressing Intent to Cease County Maintenance On and To Authorize
County Consent to Judicial Abandonment and Closure of a Portion of Lewis Drive
C-14-0012 and Other Matters Related Thereto

The resolution refers to the fact that a portion of Lewis Drive, a paved Anderson County public road, extends across the Greenville and Western Railway main tract. The resolution states that by letter dated August 11, 2008, the Greenville and Western Railway Company requested that Anderson County abandon the portion of Lewis Drive crossing the railroad track of the referenced company. The resolution then states:

WHEREAS, the County has complied with all of its ordinances and regulations pertaining to cessation of County maintenance and County consent to judicial abandonment and closure of County public roads, in the case of the above referenced portion of the Road; and

WHEREAS, Anderson County, South Carolina...desires to express its intent to cease County maintenance on, and to authorize County consent to judicial abandonment of a portion of the Road as described below;...

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(The County resolves that it)...consents to the cessation of Anderson County maintenance on, and to the judicial abandonment of a portion of Lewis Drive...and further consents to the judicial abandonment and closure of the same by the abutting property owners.

Therefore, by the resolution, Anderson County has agreed to cease maintenance on that portion of Lewis Drive that crosses the Greenville and Western railroad track. Also, as expressed by the resolution, Anderson County has consented to "judicial abandonment and closure" of the referenced road.

In reviewing your letter and researching statutory law as to the closure of a street or highway, the provisions of S.C. Code Ann. § 57-9-10 came to my attention. Such statute provides that

[a]ny interested person, the State or any of its political subdivisions or agencies may petition a court of competent jurisdiction to abandon or close any street, road or highway whether opened or not. Prior to filing the petition, notice of intention to file shall be published once a week for three consecutive weeks in a newspaper published in the county where such street, road or highway is situated. Notice shall also be sent by mail requiring a return receipt to the last known address of all abutting property owners whose property would be affected by any such change.

S.C. Code Ann. § 57-9-20 provides that

[i]f the court shall determine that it is to be the best interest of all concerned that such street, road or highway be abandoned or closed, the court shall then determine in whom the title thereto shall be vested and issue an appropriate order.

In its decision in South Carolina Department of Transportation v. Hinson Family Holdings, Inc., 361 S.C. 649, 655, 606 S.E.2d 781, 784 (2004), the State Supreme Court recognized Section 57-9-10 as "...creating a formal judicial procedure for terminating a public right of way over land...(and)...removes the uncertainty attending the common law of dedication and abandonment." In First Baptist Church of Mauldin v. City of Mauldin, 308 S.C. 226, 229, 417 S.E.2d 592, 593-594 (1992), the Court noted that "[u]nder Section 57-9-20, the court is empowered to close roads on a finding that it is in the best interest of all concerned." A prior opinion of this office dated July 6, 1984 stated that Sections 57-9-10 et seq.

...contain the procedural safeguards of notice and hearing for all abutting property owners, and the court would determine in whom the title should be vested. Use of this procedure may forestall later lawsuits by property owners claiming to have been unconstitutionally deprived of their property or access to their property.

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Also, it appears that utilizing the procedure outlined by Section 57-9-10 would foreclose any possible claims of rights of the public way being established by prescription. As noted by an opinion of this office dated February 4, 1998, "...a public way or road can be established by prescription." Therefore, in the opinion of this office, it appears that consistent with the resolution of the Anderson County Council, consideration should be given to seeking closure of the referenced portion of Lewis Drive pursuant to Sections 57-9-10 et seq. Of course, any decision as to legal action would be a matter for resolution by the particular railroad when considering any other possible grounds that the railroad would have with regard to the closure of the referenced portion of Lewis Drive.

With kind regards, I am,

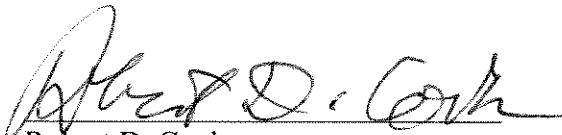
Very truly yours,

Henry McMaster
Attorney General

A handwritten signature in black ink, appearing to read "Charles H. Richardson", with a long horizontal flourish extending to the right.

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "Robert D. Cook", with a long horizontal flourish extending to the right.

Robert D. Cook
Deputy Attorney General