1001 Library

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 17, 2000

Charlton deSaussure, Jr. Esquire
Post Office Box 340
Charleston, South Carolina 29402-0340

Dear Mr. deSaussure:

By your letter of September 27, 2000, you have requested an opinion of this Office on an interpretation of South Carolina Code Section 58-25-50, which enumerates the powers and duties of regional transportation authorities.

By way of background you provide the following: The Charleston Area Regional Transportation Authority (CARTA) was formed after the South Carolina Electric & Gas Company was relieved of its obligation to provide public transportation services in the Charleston area. Certain transportation assets were ultimately transferred to CARTA to serve the public transportation needs of the region. Before the formation of CARTA, the City of North Charleston had been developing a facility that would serve as the primary railroad station for the community and would include a bus terminal and other means of public transportation. Upon the creation of CARTA, North Charleston assigned its interest in the project to CARTA because the objectives of the North Charleston project fit squarely within CARTA's mission. Currently, CARTA is continuing the process of acquiring property for the facility. Thus, the extent of the authority's eminent domain power is of particular relevance. Specifically, you ask for an interpretation of the limitation on CARTA's eminent domain power "to right-of-way and contiguous facility acquisition." S.C. CODE ANN. § 58-25-50.

Upon activation of a regional transportation authority, The Regional Transportation Authority Law, codified at S.C. Code § 58-25-10 et seq., vests numerous powers and duties upon the authority. In addition to its ability to purchase property and contract for services, the authority may also "exercise the power of eminent domain limited to right-of-way and contiguous facility acquisition." S.C. CODE ANN. § 58-25-50. The specific language used in § 58-25-50(d) to describe the authority's power is unique. In numerous instances the General Assembly grants the power of eminent domain to governmental entities, but no other provision of law contains similar language. For example, a municipal corporation has the right "to condemn such land or right-of-way or easement" under § 5-7-

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S.C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

Request Letter

50. Rural community water districts may "exercise the power of eminent domain for any corporate function," S.C. CODE ANN.§6-13-50, and The State Authorities Eminent Domain Act vests all authorities created to develop waterways of the State "the right of eminent domain." S.C. CODE ANN. §28-3-20. Furthermore, The Eminent Domain Procedure Act, codified at § 28-2-10 et seq., establishes the procedures for the exercise of eminent domain, but does not address the scope of eminent domain power for any particular governmental entity.

Adding to the confusion is the lack of case law in South Carolina addressing the scope of a transportation authority's power of eminent domain under § 58-25-50. The courts have neither examined similar language in the context of eminent domain proceedings by other entities. However, it is a general rule of statutory construction that the General Assembly's grant of power of eminent domain should be strictly construed. See Gray v. South Carolina Public Service Authority, 284 S.C. 397, 325 S.E.2d 547 (1985); Eldridge v. City of Greenwood, 331 S.C. 398, 503 S.E.2d 191 (S.C. App. 1998). Also, of course, is the long standing rule that the words of a statute must be given their plain and ordinary meaning without resorting to forced construction to limit or expand the operation of the statute. See Parsons v. Uniroyal-Goodrich Tire Corp., 313 S.C. 394, 438 S.E.2d 238 (1993); State v. Hudson, 336 S.C. 237, 519 S.E.2d 577 (S.C. App. 1999).

Applying the above rules of statutory construction, we think the phrase "limited to right-of-way and contiguous facility acquisition" confers upon the transportation authority the power of eminent domain over any right-of-way and over any facility contiguous to a right-of-way. Under this reading of the statute, for example, a regional transportation authority would have the power of eminent domain over a building contiguous to a Highway Department right-of-way for use as a bus station. By contrast, the authority probably could not condemn a building for use as a bus station that is located on property not contiguous to a right of way. However, the language appears to allow the authority to condemn property necessary to make a right-of-way and any contiguous facilities all at once. As best illustrated by these examples, such a reading of § 58-25-50 is as strictly construed as possible under the plain language of the statute and is consistent with a transportation authority's purpose in serving the transportation needs of the community.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General