



7121 Liberty

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

April 18, 2001

The Honorable Harry M. Hallman, Jr.
Mayor, Town of Mount Pleasant
P.O. Box 745
Mount Pleasant, South Carolina 29465

RE: Informal Opinion

Dear Mayor Hallman:

By your letter of March 19, 2001, you have requested an opinion of this Office concerning a municipality's authority to acquire property owned by a county. Specifically you write:

Very soon we will begin negotiating for the purchase of right of way for a new parallel road to US 17 in Mount Pleasant. One alignment would require acquisition of a portion of a property owned by Charleston County Government.

In the event that the County will not sell this property, can a municipality condemn another local government's property for a public purpose?

As a general rule, "a municipality cannot condemn land belonging to the federal government, nor land belonging to the state, nor other public land, unless expressly authorized to do so by statute." MCQUILLIN, MUNICIPAL CORPORATIONS § 32.74 (2000). See also 263 AM. JUR. 2D *Eminent Domain* § 102 (1996) ("Municipalities and other political subdivisions generally require specific legislative authority to take public property."). In South Carolina, municipalities are granted the power of condemnation pursuant to South Carolina Code of Laws Section 5-7-50, which reads in part:

Any municipality desiring to become the owner of any land or to acquire any easement or right-of-way therein for any authorized corporate or public purpose shall have the right to condemn such land or right-of-way or easement, subject to the general law of this State, within and without the corporate limits in the county in which it is situated and in any adjoining county or counties. *This authority shall not apply to any property devoted to public use*; provided, however, the property of corporations not for profit organized under the

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provisions of Chapter 35 of Title 33, shall not be subject to condemnation unless the municipality in which their service area is located intends to make comparable water service available in such service area and such condemnation is for that purpose.

(Emphasis added).

Although the statute grants a municipality broad authority to acquire "any land" "within and without the corporate limits in the county" and "in any adjoining counties," the statute does contain some limitations on that authority. Most relevant to your inquiry, is the prohibition on acquiring property already devoted to a public use. Thus, a municipality appears to have the requisite statutory authority to condemn property of the county, but only if the county property is not devoted to a public use. In effect, the exception may swallow the rule when applying the law to the facts, as the the determination of a what constitutes a public use is not so narrowly construed.

The courts have provided some commentary about the determination of a public use, or a public purpose:

In general, a public purpose has for its objective the promotion of the public health, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division.... It is a fluid concept which changes with time, place, population, economy and countless other circumstances. It is a reflection of the changing needs of society.

WDW Properties v. City of Sumter, 342 S.C. 6, 535 S.E.2d 631 (2000). Furthermore, in Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986), the Supreme Court of South Carolina put forth the following four part test to determine whether an action or expenditure of a public entity satisfied the public purpose doctrine:

The Court should first determine the ultimate goal or benefit to the public intended by the project. Second, the Court should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be considered. Fourth, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree.

As you can see, although the courts have established some basic guidelines for the determination of a public purpose, the ultimate determination of whether a public use is served is primarily one of fact for a fact finder. And of course, whether the use of such property would constitute a public use would depend on the facts surrounding each case.

In sum, the Town of Mount Pleasant can condemn property of Charleston County, but only if the property is not devoted to a public use. Because the public purpose doctrine is a "fluid

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concept," we cannot, with any great degree of certainty, advise the Town of under what circumstances a county's use of property would not be considered a public use. In the absence of certainty and in the exercise of caution, we would advise against the Town's acquisition of county property by condemnation.

This letter is an informal opinion only. It has been written by a designated 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,

A handwritten signature in cursive script, appearing to read "Susannah Cole".

Susannah Cole
Assistant Attorney General