



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 2, 1995

The Honorable James R. Metts, Ed.D.
Sheriff of Lexington County
Post Office Box 639
Lexington, South Carolina 29071

RE: Informal Opinion

Dear Sheriff Metts:

By your letter of September 15, 1995, to Attorney General Condon, you have sought an opinion as to whether a right of way, specifically a right of way which the State of South Carolina has on either side of a road, causes that property which is otherwise deeded to a private property owner to become public property. For example, you have cited a question of whether a private property owner may eject a trespasser from his property if the trespasser is on a right of way of the Department of Transportation.

The facts of a particular situation would require development before a definitive answer could be given to your inquiry; foremost among factual matters to be considered would be an examination of the documents (if any) creating the right of way to determine what rights might have been reserved by any of the parties, and to whom such rights may have been reserved. Whether an encroachment might have been granted by the Department of Transportation could also be a consideration, as well as whether an additional servitude may have been created; see Op. Att'y Gen. dated September 10, 1980, a copy of which is enclosed.

Also enclosed are copies of Ops. Att'y Gen. dated June 10, 1975; December 5, 1951; and an undated opinion of this Office located in the 1957-58 Annual Report of the Attorney General at page 170. These opinions describe the rights of various individuals to be on a right of way or to conduct some activity on a right of way, as well as actions

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which might be taken by the owner of the property in some instances. Perhaps one of these prior opinions will fit factually the situation about which you are inquiring.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosures