



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 4, 1997

The Honorable James E. Bryan, Jr.
Senator, District No. 9
Box 756
Laurens, South Carolina 29360

Re: Informal Opinion

Dear Senator Bryan:

You have referenced a situation where a portion of a State road has apparently been abandoned by the State due to a rerouting or an alteration in the roadbed. You wish to know what happens to a State road upon its abandonment. In addition, you inquire as to whether a county governing body possesses the authority to offer a quitclaim of any interest it may have in the road to adjacent or abutting property owners.

Law / Analysis

It is well-recognized by general authorities that "[a]fter a state road or a part thereof has been abandoned by the state highway authorities, it passes into the hands of local authorities." 40 C.J.S., Highways, § 186. South Carolina statutory law is consistent with this general law. Pursuant to S.C. Code Ann. Sec. 57-5-120, it is provided that

[t]he Department [of Transportation] may abandon as part of the State highway system any section of highway which may be relocated, and every such section so abandoned as a part of the State highway system shall revert to the jurisdiction of the respective appropriate local authorities involved or be abandoned as a public way. But the Department may, in its discretion, retain in the system any such relocated section when it serves as a needed connection to the new section or when it serves as a proper part of the State highway system. (emphasis added).

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This Office addressed the applicability of this statute in an opinion, dated June 30, 1969. There, we reviewed the situation where a section of Road S-30-29 in Laurens County had been relocated. The abandoned section of Road S-30-29 "included an old bridge" which had been abandoned by the Highway Department. We noted that the term "highway" included bridges for the purposes of abandonment by the Department. Referencing Section 57-5-120, we stated:

[i]n my opinion, jurisdiction over the abandoned section of Road S-30-29 reverted to Laurens County by operation of law and it is not necessary for a county or city to acknowledge assumption of jurisdiction over a section of highway abandoned pursuant to Section 33-110 [now Section 57-5-120] of the Code. At the present time, the abandoned section of Road S-30-29 is not part of the State Highway System and the Department has no present interest in any portion of the abandoned section, including the bridge. Therefore, it does not have any responsibility for the maintenance of the old bridge and would not be liable for any injuries or damages which may be sustained by persons who venture onto it.

As a precaution, we recommended to the Highway Department "that it deliver a quitclaim deed to Laurens County if execution of such an instrument was deemed necessary in order to make some disposition of the bridge." Likewise, in an Opinion of May 17, 1965, we commented that once the State has abandoned a portion of a State road, "[c]ontrol ... now vests in the county authorities." See also, Sloan v. State Hwy. Dept., 150 S.C. 337, 148 S.E. 183 (1939) ["the abandoned section of the existing road passes into the hands of the county road authorities."]

The 1965 Opinion also stated that "[t]he counties may abandon the Highway after jurisdiction is relinquished by the Highway Department." Referenced for this conclusion were two state statutes, §§ 57-9-10 and 57-17-10. The latter provision states that

[a]ll roads, highways and ferries that have been laid out or appointed by virtue of an act of the General Assembly, an order of court or an order of the governing body of any county are declared to be public roads and ferries, and the county supervisor and the governing body of the county shall have the control and supervision thereof. The county supervisor and governing body of the county may order the laying out and repairing of public roads where necessary,

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designate where bridges, ferries or fords shall be made, discontinue such roads, bridges and ferries as shall be found useless and alter roads so as to make them more useful. (emphasis added).

In State v. Hughes, 147 S.C. 452, 145 S.E. 297 (1928), our Supreme Court referenced the foregoing statute and quoted from the case of Edgefield v. Georgia-Carolina Power Co., 104 S.C. 311, 88 S.E. 801 (1915) as follows with respect to this history of the county's jurisdiction over roads in this State:

"In this State prior to 1868 the Legislature, directly by act, took jurisdiction over public buildings, roads, bridges and ferries. When a public road was to be opened or a public road to be closed, it was done directly by the terms of an Act, or by commissioners named by the Act, or generally constituted by statute. See Ex Parte Withers, 5 S.C.L. (3 Brev.); State v. Comrs, 46 S.C.L. (12 Rich.) 300 ... But the Constitution of 1868 Jurisdiction over roads, highways, ferries and bridges was vested in a board of county commissioners. Article No. IV, Section 19. And in 1868 the Legislature passed an Act defining the powers and duties of the board of county commissioners. Rev. Stats., 1873, p. 146. Thereby that board was empowered to open new roads, to work and to levy taxes therefor. The Constitution of 1895 by implication abolished the board of county commissioners, and by implication left the government of the counties in the hands of the Legislature. The Legislature since 1895 has committed to varying bodies, sometimes called commissioners, and sometimes called supervisors, the same full jurisdiction over roads, bridges and ferries which was exercised by the old county commissioners under the Constitution of 1868." ... From these authorities we conclude that the boards of county commissioners (and the sanitary and drainage commission of Charleston County has the same power and authority) has control over neighborhood roads as well as other public roads; that if it abandons a road or a portion thereof according to the method prescribed by law, it is under no legal obligation to maintain such abandoned road or portion thereof. ... The board of county commissioners or other body vested with like power and authority, in laying out

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and repairing roads where necessary, discontinuing such roads as shall be found useless, altering roads so as to make them more useful, and changing the location of old roads, where, in their judgment, such change would be for the material interest of the traveling public, is a quasi Court. State v. Stackhouse, 14 S.C. 412.

Upon the authority of State v. Stackhouse, supra, it has been decided that the judgment of a board of county commissioners cannot be collaterally attacked for irregularities. State v. Kendall, 54 S.C. 192, 32 S.E. 300

147 S.C. at 457-460.

The second statute referenced in the 1965 opinion was § 57-9-10 which 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.

This latter provision, however, has been viewed by this Office as merely a "cumulative procedure." Op. Atty. Gen., May 17, 1965, supra. Therefore, it would appear that § 57-17-10 is controlling; and the county governing body possesses the authority to discontinue a county road which has reverted to it by virtue of abandonment by the State. Op. Atty. Gen., May 17, 1965, supra. The issue thus becomes whether the county may, as part of such authority, choose to issue a quitclaim deed to abutting landowners.

Of course, a county council, pursuant to the Home Rule Act, § 4-9-30(2), is authorized to lease, sell or otherwise dispose of real and personal property. Moreover, § 4-9-30(5) bestows upon counties general authority over roads, drainage or other public works.

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A "quitclaim deed" conveys only whatever title or interest the grantor has. Buller v. Buller, 145 P.2d 653, 655 (Cal. 1943). Such a deed contains no covenants. Balch v. Arnold, 59 P. 434, 435 (Wyo. 1899). It functions in the nature of a release. State v. Kemmerer, 84 N.W. 771, 773 (S.D. 1900).

The Georgia case of Stein v. Maddox, 234 Ga. 164, 215 S.E.2d 231 (1975) is instructive with respect to your situation. There, the Supreme Court of Georgia reviewed the validity of a transaction wherein Fulton County had legally discontinued a public road within the County and had conveyed by quitclaim deed to the defendant Maddox the portion of the road in question. Maddox was the abutting landowner to the road. The quitclaim deed recited as consideration the amount of one dollar.

Plaintiffs, as taxpayers, sought cancellation of the quitclaim deed. The principal basis for plaintiff's lawsuit was that the county had quitclaimed to Maddox the property for the sole benefit of Maddox and thus the issuance of the quitclaim deed constituted an abuse of discretion on the part of the county. The Court's analysis, in rejecting this argument, was as follows:

"Neither the General Assembly nor a subordinate public corporation acting under its authority can lawfully vacate a public street or highway for the benefit of a private individual. The street or highway cannot be vacated unless it is for the benefit of the public that such action should be taken. The benefit may be either in relieving the public from the charge of maintaining a street or highway that is no longer useful or convenient to the public, or by laying out a new street or road in its place which will be more useful and convenient to the public in general. If the public interest is not the motive which prompts the vacation of the street, whether partial or entire, the act of vacation is an abuse of power, and especially would it be a gross abuse of power if it is authorized without reference to the rights of the public and merely that the convenience of a private individual might be subserved." [citations omitted] ... There is a rebuttable presumption that the vacation of a public street is for the benefit of the public.

...

The only evidence in the record tending to disclose the motive of the county commissioners, in authorizing the execution of the present quitclaim deed, is the evidence that

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Old Roswell-Duluth Road was no longer used by the public. In the absence of other evidence, this is sufficient to show that the public would benefit by the county's being relieved of the expense of maintaining this road since it was no longer needed for public use.

215 S.E.2d at 236-37. The Court also concluded that the consideration of one dollar was a valuable and sufficient consideration. Holding that "[u]nder the evidence in this case, the county received substantial consideration for the quitclaim deed by being relieved of the burden and expense of maintaining this roadway ...," the Court concluded that, in the absence of evidence to the contrary, the consideration was sufficient. Thus, the county's quitclaim of its interest (here an easement) was deemed valid and not subject to cancellation.

Of course, I must assume the facts as presented herein. This Office is not able to make factual findings in an Opinion of the Attorney General. Op. Atty. Gen., December 12, 1983. However, the law in South Carolina is to the effect that where the South Carolina Department of Transportation has legally abandoned a portion of a State road,¹ such portion reverts to the local authorities -- in this instance, the county government. Moreover, State law also empowers the county governing body to abandon or discontinue a county road so long as such is for the benefit of the public and not solely for a private individual. In my judgment, nothing prohibits or precludes the county, upon making a decision to abandon or discontinue a road, to dispose of whatever interest it

¹ The Court, in Wessinger v. Goza, 231 S.C. 607, 99 S.E.2d 395 (1957) reiterated the general law with respect to the abandonment of a public road. The Court emphasized that the common law doctrine that once a highway, always a highway is now subject to certain limitations and exceptions. A public highway, said the Court, is not deemed abandoned merely because a new road is built. The Court also emphasized that an abandoned highway or portion thereof cannot be closed "without the consent of the persons whose property fronts thereon and over whose land it passes." Moreover, the Court referenced the Sloan case for the proposition that the sections of the existing road abandoned by the State "would pass into the hands of the County Road authorities 'who no doubt will see that it is properly maintained as are other county road[s].'" Thus, once there has been a clear abandonment by the State, the road reverts back to the County who then must decide to continue to keep the road open or itself discontinue the road in the manner specified by statute. A quitclaim deed would be one appropriate means to rid itself of the property if the County chooses to discontinue the road. Stein, supra; Cf. Op. Atty. Gen., June 30, 1969, supra.

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retains, if any, by quitclaim deed. This action was upheld in the Stein case. The purpose of a quitclaim deed is typically not a warranty of good title, but simply a disposition of whatever interest as person or entity has at the time.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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 kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an