

# The State of South Carolina



## Office of the Attorney General

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July 26, 1991

The Honorable J. Michael Baxley  
Member, House of Representatives  
Box 1439  
Hartsville, South Carolina 29550

Dear Representative Baxley:

By your letter dated June 13, 1991, to Attorney General Medlock you have described the "deplorable condition" of certain railroad tracks located in Darlington County and asked "who is legally responsible for maintenance of these railroad crossings." Attorney General Medlock referred your letter to me for response and I subsequently received a telephone call from you to discuss this matter further.

Based on your letter and our telephone conversation, I understand the facts to be as follows. A railroad company owns and operates a railroad in Darlington County and a portion of the tracks goes into a private grain company which is closed. The private grain company owns the real property or right of way whereon is situated the railroad tracks that provide ingress and egress to its premises and grain elevator. These tracks cross State owned highways. The crossings require immediate repair and maintenance for public safety. The South Carolina Department of Highways and Public Transportation ["Highway Department"] has repaired these crossings in the past but is unable to do so now due to budget constraints. The private railroad company asserts that the right of way concerning these tracks belongs to the private grain company. The private grain company denies any responsibility to repair or maintain the crossings. In providing you with an opinion, this Office must, of course, assume the facts as you have provided them.

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As you cited in your letter, S.C. Code Ann. §58-15-2110 (1976) provides:

Whenever the public safety, convenience or necessity so requires, all operators of railroads which are now or hereafter shall be crossed at grade by a public highway shall construct and maintain grade crossings meeting the requirements of the authorities responsible for such highways. This shall apply to crossings necessary for new highways, as well as to crossings needed to replace existing crossings rendered obsolete or unnecessary by the relocation or improvement of existing highways or roads.


Section 58-15-2110 is codified as part of Article 21 of Title 59 of the South Carolina Code of Laws. That Article governs "Construction and Maintenance of Railroad Grade Crossings of Highways." Section 58-15-2120 of that Article authorizes the Highway Department to make specifications and enter into agreements concerning grade crossings of State highways which could include the Highway Department's agreement "to pave the area across the tracks after the area is otherwise prepared for paving by the operator of the railroad." Section 58-15-2120 also contains a procedure for hearings concerning these grade crossings. Article 21 of Title 58 also contains provisions as to penalties for noncompliance; however, those penalties can be waived under certain conditions when the Highway Department enters into an agreement pursuant to §58-15-2120.

Although §58-15-2110 would appear to apply to the situation you describe to require either the private railroad company or private grain company or both, depending upon which of the two is the operator of the railroad at this specific location, to maintain the grade crossing, the assumed facts are not sufficient for a determination as to which of those entities here is the "operator of the railroad" at this crossing. Moreover, such a determination would necessarily require factual findings and an opinion of the Attorney General cannot make factual findings. S.C. Att'y Gen. Op. No. 90-16 (Feb. 5, 1990). Furthermore, you should probably inquire of the Highway Department as to whether any hearing was conducted or agreement reached pursuant to §58-15-2120. Either of those factors could have altered the standard operation of §58-15-2110.

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I hope the above information will be of assistance to you in this matter.

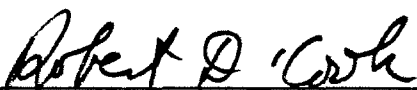
Sincerely,

  
Samuel L. Wilkins  
Assistant Attorney General

SLW/fg

REVIEWED AND APPROVED BY:

  
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Chief Deputy Attorney General

  
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